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Supreme Court of the United States

OCTOBER TERM, 1951

No. 331

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN, PETITIONER,

vs.

SHIRLEY COLLINS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 17, 1951.

CERTIORARI GRANTED NOVEMBER 5, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

DOCKET ENTRIES

1950.

March 14. Petition for writ of habeas corpus filed.
April 6. Order denying petition for writ of habeas corpus filed and entered. Koscinski, J.
April 6. Proof of mailing of copies of order filed.
April 24. Notice of appeal filed.

[fol. 2] [File endorsement omitted]

UNITED STATES OF AMERICA IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Docket No. 9086

In the Matter of Petition for Writ of Habeas Corpus In Re SHIRLEY COLLINS

PETITION FOR WRIT OF HABEAS CORPUS—Filed March 14, 1950

To the Honorable U. S. District Court:

GREETINGS:

Now, comes Shirley Collins, the above named petitioner, in Proper Person, and petitions this Honorable Court for a writ of habeas corpus.

He respectfully shows unto the Court the following Facts, as the basis for the relief herein asked and prayed for viz:

(Reasons and Grounds.)

1. That your petitioner, Shirley Collins is now illegally imprisoned by one Julian N. Frisbie, Warden of the State Prison of Southern Michigan, located in Blackman Township in Jackson County, State of Michigan.

2. That the cause or pretense of said imprisonment, according to the best knowledge and belief of your petitioner is, by a commitment issued by the Circuit Court for the County of Genesee of Flint, Michigan.

3. That the said imprisonment is illegal and unlawful, and the aforesaid commitment is null and void;

[fol. 3] Question of Law Involved for Judicial Inquiry

1. Because petitioner herein was unlawfully and illegally arrested on February 19, 1942, in the City of Chicago, Illinois, by two Flint, Michigan police officers.

2. Because petitioner herein was forcibly kidnapped and returned to Michigan; denied due process of law, right of counsel, and a hearing in Court.

3. Because there was no requisition made upon the Governor of the State of Illinois for the apprehension of petitioner herein as a fugitive from justice and for his delivery up to the authorities of the State of Michigan.

4. Because the belief of the accused, when leaving the demanding state, that he had not committed any crime against the laws of that state, does not prevent his being a fugitive from justice within the meaning of the provision of U. S. Constitution Art. 4 & 2, and U. S. Rev. Stat. No. 5278 (U. S. Comp. Stat., 1901, P. 3597), relating to extradition proceedings.

5. Because, to be a fugitive from justice within the meaning of the provisions of U. S. Const. Art. 4 and 2, and U. S. Rev. Stat. No. 5278, relating to extradition proceedings, it is only necessary that the accused, having been in the demanding state when the crime was committed, thereafter leave that state and be found within the territory of another.

6. Because the Governor of Illinois did not issue any warrant for the arrest of petitioner herein, and for his delivery up to the police officers of the State of Michigan.

7. Because extradition between the states must be in accordance with the Constitution and laws of the United States, it is founded on Article 4, Section 2 of the Constitu-
[fol. 4] tion of the United States and not on state's comity, courtesy, contract or statutes.

8. Because the return of the petitioner as a fugitive from justice must have been demanded by the executive authorities of the state from whence he has fled.

9. Because on February 20, 1942, petitioner herein, was beaten until unconscious with blackjacks by the Illinois and Michigan officers when he refused to waive extradition to Michigan.

10. Because petitioner herein, having been in confinement since his return to Michigan on February 21, 1942.

11. Because petitioner herein, has been denied due process of law within the meaning of Article 4, section 2 of the Constitution of the United States.

This petition is based upon the files and records of the questions here involved and upon the affidavit of petitioner, all of which is herein submitted.

Respectfully submitted. (S.) Shirley Collins, Petitioner. In Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: February 16, 1950.

[fol. 5] IN UNITED STATES DISTRICT COURT

STATEMENT OF FACTS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Your Petitioner herein, Shirley Collins, states to this Honorable Court, that he was living at 3419 South Parkway in the City of Chicago, County of Cook, State of Illinois on the 19th day of February 1942; and that he had resided in this place for ten months prior to the above named date.

That on February 19, 1942, he was arrested in the Wabash bus station in the City of Chicago, Illinois, by two Flint, Michigan police officers.

That he was handcuffed and took by force to the Twelfth Street police station and the Michigan officers ordered him to be held in custody.

That when he refused to answer any questions until he could consult with a lawyer, he was then attacked by the Illinois and Michigan officers and beaten with blackjacks.

That the Michigan officers ordered the Illinois authorities not to let him see a lawyer or anyone else, they said it would do him no good to see a lawyer for they were taking him back to Flint, Michigan immediately.

That on February 20th, 1942, the Michigan officers and the Illinois authorities questioned him again. He was asked if he was ready to go back to Michigan without affording them any additional trouble, and he was asked if he was ready to talk. When he told them he would not make up his mind until he could see a lawyer, he was again attacked by both

the Michigan and Illinois officers with blackjacks, and was beaten until he was unconscious. When he regained consciousness, he was back in a cell.

That on February 21, 1942, he was delivered up to the Flint, Michigan police officers by the authorities of the Twelfth Street police department in Chicago, Illinois, and he was returned to the State of Michigan, City of Flint, and he has been in confinement in a prison in the State of Michi-
[fol. 6] gan since February 21, 1942.

End of Statement of Facts.

Hereon, we proceed by citing the law and cases pertaining to the questions herein involved.

Underhill's "Fourth Edition", page 1463, Sec. 807 (758).

Evidential rules governing interstate extradition—Duty of the Governor—Extradition between the states must be in accordance with the Constitution and laws of the United States. United States, Kentucky v. Dennison, 24 How. (65 U. S.) 66, 16 L. ed. 717. Federal Ex parte Montgomery, 244 fed. 967. It is founded on article 4, section 2 of the Constitution of the United States and not on states comity, courtesy, contract or statutes. Ex parte Morgan, 20 Fed. 298; In re opinion of Justice, 201 Mass. Article 4, section 2 of the Constitution of the United States provides, "that any person charged in any state with treason, felony or other crime, who shall flee from justice and be found subsequently in any other state of the Union, shall, on the demand of the Executive of the state from whence he has fled, be delivered up to be removed to the state having jurisdiction of his crime. Strassheim v. Dailey, 221 U. S. 280, 55 L. ed. 735, 31 Sup. Ct. 558. At a very early period Congress endeavored by statutory enactment to carry into effect the general provisions of this section of the Constitution. W.S.C., tit. 18, Sec. 662. States may also enact laws regulating interstate extradition, Ex parte Ammons, 34 Ohio St. 518. See notes, 68 Am. St. 133; 112 Am. St. 111. provided they are consistent with the federal constitution, Kurtz v. State 22, Fla. 36 I Am. St. 173. even though the state laws require surrender or more exacting terms or cover cases not provided for by the United States. Innes v. Tobin, 240 U. S. 127, 60 L. ed. 562, 36 Sup. Ct. 290 (statute as to persons indictable in another state who have not fled from it). See note, 28

L.R.A. 802. In construing the federal statute, which has been held constitutional, Prigg v. Pennsylvania, 16 Pet. (41 U. S.) 539, 10 L. ed. 1060; Ex parte Morgan, 20 L. ed. 298. the courts have held: first, that the return of the fugitive from Justice must have been demanded by the executive authorities of the state from whence he has fled; People v. Warden of City prison, 83 App. Div. 456, 82 N.W.S. 489; second, it must affirmatively appear by the [fol. 7] evidence that he is charged with the commission of some extraditable, definite and specific offense requisite: Kentucky v. Dennison, 24 How. (65 U. S.) 66, 16 L. ed. 717; Ex parte Slauson, 73 Fed. 666; crime, Federal. Reed v. United States, 224 Fed. 378; which is within the jurisdiction of its courts. United States, Hogan v. O'Neill, 255 U. S. 52, 65 L. ed. 497, 41 Sup. Ct. 222 (governor taking notice of laws of demanding state). Federal, Downey v. Schmidt, 4 Fed. Sup. 1.

A crime as used in article 4, section 2 of the Constitution of the United States includes misdemeanors and every possible crime committed within the borders of the United States. Taylor v. Tainter, 16 Wall. (83 U. S.) 366, 21 L. ed. 287; In re: Brown, 112 Mass. 409, 17 Am. Rep. 114; The word "charged" applies to persons convicted of crime as well as to those who are sought to be tried, Ex parte Bergman, 60 Tax. Cn. 8 130 S.W. 174. As long as the judgment remains unsatisfied, Hughe v. Pflanz, 138 Fed. 980 (record of conviction as evidence). And it applies to one against whom a complaint for a felony is filed before a committing magistrate who can merely hold for trial before another tribunal. Matter of Strauss, 197 U. S. 324, 49 L. ed. 774, 25 Sup. Ct. 555. The fact that the accused is charged with such a crime may be proved by the production of a warrant for his arrest, Federal. Reed v. United States, 224 Fed. 378, or an indictment duly certified and authenticated as provided by statute, supplemented by an affidavit reciting any other facts which are necessary to confer jurisdiction and charging him substantially with a crime against the laws of the state demanding his return. United States, Ex parte Reggel, 114 U. S. 642, 29 L. ed. 250, 5 Sup. Ct. 1148.

Extraordinary Legal Remedies Vol. 1

Page 109, Sec. 89—The requisition—the removal of a person from a state under extradition is summary in its char-

acter, and the provision of the act of Congress must be strictly complied with, People v. Donohue, 84 N. Y. 438, 441; Ex parte Cheatham, 50 Tex. Cn. 51, 58, 95 S.W. 1077. And the proceedings kept within narrow bounds.

Biddinger v. N. Y. Police Comr., 245 U. S. 128, 135, 38 [fol. 8] S. C. 41, 62 L. ed. 193. There must be a demand from the Governor of the state within which the crime has been committed for the surrender of the fugitive who has fled from its jurisdiction. People v. Donohue, 84 N. Y. 438, 441.

The requisition must show that the accused has committed a crime within the jurisdiction of that state and that he is a fugitive from justice. It must be accompanied by a copy of the indictment found or affidavit made before a magistrate charging the offense committed, and duly certified by the Governor. Comm. ex rel Flower v. Supt. of County prison, 220 Pa. 401, 69, Atl. 916 21 L.R.A. N.S. 939.

Such conditions are essential, and their presence or absence in a given case must, of necessity become the subject of judicial investigation when the judgment of the law is invoked. People v. Donohue, 84 N. Y. 438, 441.

In pursuance with the requisition, if it shows on its fact that all the requirements of the Federal Act have been complied with, it is the duty of the Governor of the asylum state to recognize the statements of fact made therein as true, and to issue his warrant and cause the accused to be arrested and delivered to the agent representing the executive of the demanding state. Comm. ex rel Flower v. Supt. of County Prison, 220 Pa. 401, 69 Atl. 916, 21 L.R.A., N.S. 939 Ex Parte Surearingen, 13 S.C. 74. This is especially so because there is no mode of enforcing the performance of this duty. Ex parte Swearingen, 13 S.C. 74.

As petitioner has no constitutional right to a hearing before the Governor, or to submit evidence in his behalf, Munsey v. Claugh, 196 U. S. 364, 25 S.C. 282, 49 L. E. 515; People ex rel Carkran v. Hyatt, 172H, T. 176, 64 N.E. 825, 60 L.R.A. 774, iff. 188 U. S. 691, 47 L. ed. 657, 23 S. C. 456. And as extradition between states can be granted wit-out notice, it is, therefore, immaterial that petitioner is heard by other than the governor. Ex parte Pelinski, 213, S.W. (Mo.) 809. However, accused may contest the validity of the extradition proceedings on habeas corpus. Comm. ex rel Flower v. Supt. of County prison, 220 Pa. 401, 69 Atl.

916, 21 L.R.A., 939. Upon issuance of the writ a return should be made showing a demand or requisition, a copy of [fol. 9] the indictment or affidavit, certified as authenticaby the executive of the demanding state and the warrant of the governor of the asylum state.

When these facts are made to appear by papers regular on their face, there is a weight of authority which holds that the prisoner is prima facie under legal restraint, Barriere v. State, 142 Ala. 72, 78, 39, So. 55. And the court should not on habeas corpus, refuse to recognize the validity of and enforce the warrant unless the accused clearly and satisfactorily shows he is not a fugitive from justice within the meaning of the Federal Constitution and the act of Congress. Comm. ex rel Flower v. Supt. of County Prison, 220 Pa. 491, 69 Atl. 916, 21 L.R.A. N.S. 939. This is especially so as to release on technical grounds. Compton v. Alabama, 214 U. S. 1, 8, 29 S.C. 605, 53 L. ed. 885.

Whether the return does so show these facts is a question of law, and is always open to judicial inquiry. Appleyard v. Mass. 203 U. S. 222; Roberts v. Reilly, 116 U. S. 80.

On the hearing the court may inquire whether the prisoner really falls under the conditions of the Federal Constitution and statute, that is, whether he is subject to extradition. Robb v. Connolly, 111 U. S. 624, 4 S.C. 544, 28 L. ed. 542; State of Tennessee v. Massee, 95 S.C. 315, 79 S.E. 97, 46 L.R.A. N.S. 781.

It may be ascertained whether he is the person charged whether a fugitive, whether the papers show he was in the demanding state at the time the offense was committed, and whether the act charged was a crime against the laws of the demanding state. Seely v. Beardsley, 190 N.W. (10) 498; Comm. ex rel Flower v. Supt. of County Prison, 220 Pa. 401, 69 Atl. 916, 21 L.R.A., N.S. State of Tennessee v. Massee, 95 S.C. 315, 79 S.E. 97, 46 L.R.A., N.S. 781; Ex parte Tod, 12 S.D. 386, 81 N.W. 637, 47 L.R.A. 566.

To authorize surrender, the party held must not only stand charged with crime, but he must be a fugitive from justice. To be a fugitive he must have been corporeally present in the demanding state at the time of the commission of the alleged crime; constructive presence is insufficient. People ex rel Carkran v. Hyatt, 172 N. Y. 176, 64 N.E. 825, 60 L.R.A. 774, Aff. 188 U. S. 691, 47 L. ed. 657, [fol. 10] 23 S.C. 456.

This is a question of fact which the governor of the asylum state must, in the first instance, determine for himself. Hogan v. O'Neill, 255 U. S. 52, 41 S.C. 222; Appleyard v. Mass., 203 U. S. 222, 228, Roberts v. Reilly, 116 U. S. 80; Robb v. Connolly, 111 U. S. 624, 4 S.C. 544, 28 L. ed. 542.

Being a question of fact, it is when contraverted, to be ascertained and determined like any other question of fact. Ex parte Tod, 12 S.D. 386, 81 N.W. 337, 47 L.R.A. 566.

Whether the accused is a fugitive depends upon the construction of the Federal Constitution and laws on extradition, which are not construed narrowly and technically by courts as if they were penal laws, but liberally, to effect their important purpose. Biddinger v. New York Police Comr., 245 U. S. 128, 133.

In accordance with such construction, a person charged by indictment or by affidavit before a magistrate with the commission within a state of a crime covered by its laws, and who after the date of the commission of such crime leaves the state—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within the meaning of the Constitution and laws of the United States, a fugitive from justice, and if found in another state must be delivered by the governor of such state to the demanding state on the production of such indictment or affidavit, certified as authentic by the governor of the demanding state. Biddinger v. New York Police Comr., 245 U. S. 128, 133; Appleyard v. Massachusetts, 203 U. S. 222, 227.

This is so even though he leaves the demanding state before prosecution is anticipated or begun, or without knowledge on his part that he has violated the law, or having committed a crime in one state, returns to his home in another, Biddinger v. New York Police Comr., 245 U. S. 128; Roberts v. Reilly, 116 U. S. 80; Appleyard v. Massachusetts, 203 U. S. 222; Kingsbury's case 106 Mass. 223.

[fol. 11] And even not for the purpose of escaping. Hogan v. O'Neil, 255 U. S. 52, 41 S.C. 222. Such is the demand of the Supreme law of the land, which may not be disregarded by any state. Biddinger v. New York Police Comr. 245 U. S. 128., 134.

Inclusion

Petitioner, herein request this Honorable Court, that it inquire into the legality of his restraint, and upon due

consideration thereof, petitioner prayes he may be discharged from this restraint.

Respectfully submitted, (S.) Shirley Collins, Petitioner, Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: February 16, A. D. 1950.

[fol. 12] *Duly sworn to by Shirley Collins. Jurat omitted in printing.*

[fol. 13] IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

Now comes Shirley Collins, the above named defendant, in Proper Person, and respectfully petitions this Honorable Court for a writ of habeas corpus ad testificandum, and shows unto the Court his reasons therefore:

(1) That Shirley Collins is the defendant and counsel at a proceedings docketed and scheduled to be heard before this Court;

(2) That Shirley Collins is confined as an inmate in the State Prison of Southern Michigan, Blackman Township, Jackson, Michigan, by Warden Julian N. Frisbie.

(3) That the presence of Shirley Collins, is as his own counsel is imperative since he is to argue, and adduce documentary evidence in said proceedings.

This Petition is based upon the affidavit of petitioner.

(S.) Shirley Collins, Petitioner.

[fol. 14] *Duly sworn to by Shirley Collins. Jurat omitted in printing.*

[fol. 15] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR PETITION—February 16, 1950

To the Clerk of the U. S. District Court, 701 Federal Building, Detroit (26), Michigan:

SIR:

Notice, Please place the attached petition for writ of habeas corpus on the docket and call the same for a hearing

and oral argument, on the 27th day of February, 1950, at ten o'clock in the morning of that day, or as soon thereafter as counsel may be heard.

Yours truly, (S.) Shirley Collins, Petitioner, Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: February 16th, 1950.

[fol. 16] IN UNITED STATES DISTRICT COURT

NOTICE OF FILING OF PETITION FOR WRIT OF HABEAS CORPUS—February 16, 1950

To Mr. Stephen J. Roth, Attorney General, 112 State Capital Building, Lansing 2, Michigan:

SIR:

Please Take Notice, that I have on this 16 day of February, 1950, forwarded to the Clerk of the U. S. District Court, a petition for a writ of habeas corpus, of which the annexed is a true copy, and also a Statement of Facts in support thereof, on which the Court is requested to issue its order to the respondents named herein, copy of which is now served with this notice, along with a copy of a Praecipe for said petition.

Yours truly, (S.) Shirley Collins, Petitioner in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Dated: this 16th day of February A. D., 1950.

[fol. 17] IN UNITED STATES DISTRICT COURT

AFFIDAVIT IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND PROOF OF SERVICE

STATE OF MICHIGAN,
County of Jackson, ss:

Shirley Collins, being first duly sworn on oath deposes and says that he has examined the files and records in this cause, and upon such examination believes the foregoing

petition submitted by him to be true. Petitioner says that a true copy of the within named petition and supporting papers, have been properly addressed and placed in the care of Personal Affairs' officer, for mailing via the United States Registered mail, to George M. Read, Clerk of the U. S. District Court, located at 701 Federal Building, Detroit 26, Michigan; and to Stephen J. Roth, Attorney General for the State of Michigan at the State Capital Building, Lansing 2, Michigan, the regular place from which they condnet the business of their offices.

Further petitioner sayeth not.

(S.) Shirley Colllins, Petitioner Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Subscribed and sworn to before me a Notary Public on this 16th day of February A. D. 1950.

(S.) N. Jones, Notary Public in and for Jackson County, Jackson, Michigan. My commission expires: Aug. 28, 1953. (Seal.)

[fol. 18] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS—April 5, 1950

At a session of said court held at the Federal Building, Detroit, Michigan on the 6th day of April 1950

Present: Hon. Arthur A. Koscinski, District Judge

A petition for a writ of habeas corpus was filed by Shirley Collins alleging that his imprisonment at the Michigan State Prison, Jackson, Michigan, since February 21, 1942, is illegal and unlawful and his commitment is null and void because he was forcibly kidnapped and returned to Michigan for trial on a murder charge and that he was therefore deprived of his constitutional rights as provided in Article IV, Sec. 2 of the Constitution of the United States providing for extradition of fugitives.

Petitioner originally filed a petition for a writ of habeas corpus in the Supreme Court of the State of Michigan which was denied on June 22, 1949. He then filed a petition for a writ in this District, on the ground that the complaint in the state court action was defective and that a faulty warrant was issued for his arrest, claiming further that he was kidnapped by Michigan Police authorities in Chicago, Illinois, and brought to Michigan for trial. This petition was also denied.

In his second petition for a writ of habeas corpus filed in this court petitioner singles out the claim that he was illegally brought to the State of Michigan for trial.

The state court which sentenced petitioner to imprisonment after his conviction had jurisdiction of the offense and of the person of the petitioner as defendant, and the sentence was within the power of the court to impose. Habeas Corpus will not lie to discharge a defendant in such case.

The fact that he was brought from another jurisdiction by alleged illegal means, such as kidnapping, or unlawful force, did not deprive the sentencing court of jurisdiction. The [fols. 19-20] presence of defendant in the court which imposed the sentence gave it complete jurisdiction over defendant's person regardless of how presence was procured. (See Robinson v. U. S., 144 F. 2d, 392; affirmed 324 U. S. 282.)

It is therefore ordered that the petition for a writ of habeas corpus be and the same is hereby denied.

(S.) Arthur A. Koscinski, U. S. District Court.

[fol. 21] [File endorsement omitted]

In United States District Court

Notice of Appeal—Filed April 24, 1950

Notice is hereby given that Shirley Collins, Petitioner, above named hereby appeals to the United States Court of Appeals for the Sixth Circuit from the order denying application for Writ of Habeas Corpus entered in this cause on April 6, 1950.

(S.) Shirley Collins, Petitioner, Acting in Proper Person. Address: 4000 Cooper Street, Jackson, Michigan.

Subscribed and sworn to before me a Notary Public on this 21st day of April A. D. 1950. (S.) N. Jones, Notary Public, Jackson County, Michigan. My commission expires Aug. 28, 1951. (Seal.)

[fol. 22] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 23] IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CAUSE SUBMITTED—April 6, 1951

Before Simons, Martin and Miller, Circuit Judges

Permission having been formerly granted by the court this cause is taken under submission without oral argument.

JUDGMENT—Entered May 28, 1951

Appeal from the District Court of the United States for the Eastern District of Michigan

This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was submitted without argument.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the cause remanded for further proceedings in accordance with the opinion herein.

[fol. 24] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 11269

SHIRLEY COLLINS, Appellant,

v.

JULIAN N. FRISBIE, Warden, State Prison of Southern Michigan, Jackson, Michigan, Appellee

Appeal from the United States District Court for the Eastern District of Michigan

OPINION—May 28, 1951

Before Simons, Martin and Miller, Circuit Judges

MARTIN, Circuit Judge:

This is an appeal from denial by the United States District Court of a petition for writ of *habeas corpus*, wherein the petitioner avers that he was illegally arrested and maltreated in Chicago, Illinois, by two Michigan police officers, and forcibly kidnaped by them and returned to Michigan, where he is now illegally imprisoned.

The petitioner charges that he has been denied due process of law, right of counsel, and a hearing in court. He shows that no requisition was made upon the Governor of Illinois for his apprehension therein as a fugitive from justice and for his delivery to the authorities of the state of Michigan. In his statement of facts in support of his petition, he alleges that, prior to his arrest on February 19, 1942, in Chicago, Illinois, he had resided in that city for ten months. He states that he was arrested at a bus station in Chicago, handcuffed, and taken by force to the Twelfth Street Police Station, where the Michigan police ordered him to be held in custody; that when he refused to answer any questions until he could consult a lawyer, he was attacked and beaten with blackjacks by the Illinois and Michigan police officers; that the Michigan officers ordered the Illinois authorities not to let him see a lawyer or anyone else, saying that it would do him no good for they were taking him back to Flint, Michigan.

According to his averments, he was questioned again on the next day by the officers of both states and, when asked [fol. 25] if he was ready to go back to Michigan without causing any additional trouble and if he was ready to talk, he replied that he would not decide until he could consult a lawyer; whereupon he was again attacked with blackjacks by both the Michigan and the Illinois officers and beaten into unconsciousness. He declares that, on the following day, he was delivered to the Michigan police officers by the Chicago Police Department, and was carried to Flint, Michigan. He avers that he has been confined in prison since February 21, 1942.

So far as the record discloses, the petitioner has been given no hearing for determination of the truth or falsity of the allegations of his petition for writ of *habeas corpus*. In an order denying the petition, the district judge asserted that the fact that petitioner had been brought from another jurisdiction "by alleged illegal means, such as kidnaping, or unlawful force, did not deprive the sentencing court of jurisdiction." The court cited *Robinson* v. *United States*, 144 F. (2d) 392 (C. A. 6), affirmed 324 U. S. 282, to the proposition that the presence of the defendant in the court which imposed sentence gave it complete jurisdiction over his person, regardless of how such presence was procured.

On its facts, the *Robinson* case bears no analogy to the case at bar. The statement of this court relied upon by the district court related to an assignment of error that the order of a California district court directing Robinson to be returned to the Kentucky district court was in contravention of the provisions of the Removal Statutes, Title 18, section 591, United States Code. Any defects in the removal proceedings were regarded as immaterial upon the principle stated. *But Robinson had not been kidnaped or forcibly brought into Kentucky.* The California district court had directed that he be returned to the Kentucky district court for trial.

The present case is governed by our later decision in *Brown* v. *Frisbie*, 178 F. (2d) 271 (C. A. 6), decided December 8, 1949, in which two of the judges now sitting participated. The opinion writer in the instant case concurred in the opinion in the *Robinson* case. In *Brown* v. *Frisbie*, the petition for writ of *habeas corpus* alleged that petitioner had been forcibly kidnaped in Georgia and brought to Michi-

gan by a police officer of that state, with the connivance and brutal assistance of four deputy sheriffs in Georgia. As we pointed out, the appellant, Brown, averred that the officers attempted to persuade him to sign a waiver, which he declined to do; whereupon, he was attacked by four deputy sheriffs and the Michigan police officer. He alleged further [fol. 26] that he was threatened with a rope and pistols, was intimidated and beaten; yet he refused to sign the waiver. He said that he was handcuffed, shackled and told that "a n---er had no constitutional rights in Georgia"; was dragged to a scout car from the sheriff's office by four deputy sheriffs and the Michigan officer, hustled to the railroad station and aboard a train for Michigan, the officer of which state was instructed to keep him handcuffed, in shackles, and in his seat until the state line had been crossed, with the assurance of the deputy sheriffs that they would "stall the lawyer" who was preparing to resist the petitioner's extradition. Our mandate was that the case be remanded to the district court for further procedure, including the determination of the factual issues, appropriate findings to be filed by the district judge.

There is no material difference in crucial facts or in principle between *Brown* v. *Frisbie* and the instant case. The same district court pursued the same course in each case. It is argued that our decision in the former case is not in conformity with the opinions of the Supreme Court in *Mahon* v. *Justice*, 127 U. S. 700, and *Ker v. Illinois*, 119 U. S. 436. At first blush, it would seem that we are out of line with those authorities which are, of course, binding upon us; but careful analysis and thoughtful consideration will, in our judgment, demonstrate that we are not.

In *Mahon* v. *Justice*, decided in 1887, the petitioner for *habeas corpus*, who was charged with murder in Kentucky, was violently seized and forcibly abducted to that state from West Virginia while requisition for his return was pending before the Governor of West Virginia. The Supreme Court held that no mode is provided by which a person wrongfully abducted from one state to another by persons acting without warrant or authority of law can be restored to the state from which he was taken, if held upon any process of law for an offense against the state to which he has been carried. The court stated that the only question which was presented for its determination was whether in

the circumstances the petitioner was entitled under the Constitution and laws of the United States to release from detention under the indictment, by reason of his forcible and unlawful abduction. The answer was given in the concluding paragraph of the opinion (127 U. S. 715): "So in this case we say that, whatever effect may be given by the state court to the illegal mode in which the defendant was brought from another State, no right, secured under the Constitution or laws of the United States, was violated by his arrest in Kentucky, and imprisonment there, upon the [fol. 27] indictments found against him for murder in that State." It was asserted that whether Congress might not provide for the compulsory restoration of a person to the state from which he has been wrongfully abducted and whether such provision would not greatly tend to the public peace along the borders of the several states were not matters for consideration of the court at that time. It should be observed that *there was no federal statute against kidnaping in existence at the time Mahon* v. *Justice was decided.*

The court said that the earlier case of *Ker* v. *Illinois, supra,* had direct bearing. There, the prisoner had been kidnaped in Peru by a person lawfully delegated to receive him from the Peruvian authorities. Without presenting any demand upon them, the delegate forcibly placed the prisoner on board a United States vessel, transferred him to another, and brought him to California against his will. Before the prisoner's arrival in that state in forcible custody, the Governor of Illinois had made a requisition upon the Governor of California for the delivery of the prisoner as a fugitive from Illinois justice. He was lawfully extradited from California to Illinois, where he was tried and convicted and his sentence affirmed by the highest court of the latter state. On writ of error, the Supreme Court of the United States affirmed the judgment of the state court. It was said that how far the forcible transfer of the defendant, so as to bring him within the jurisdiction of the state where his offense was committed, may be set up against the right to try him is the province of the state court to decide, presenting no federal question reviewable by the Supreme Court of the United States. *In the instant case, we think a federal question is presented.*

It is true that the Supreme Court has adhered to the doctrine of *Mahon* v. *Justice, supra,* and *Ker* v. *Illinois,*

supra. See *Buxton* v. *New York Central and Hudson River Railroad Company*, 245 U. S. 315; *Pettibone* v. *Nichols*, 203 U. S. 192, 217 (with a lone voice, that of Mr. Justice McKenna, crying in the wilderness); *Adams* v. *New York*, 192 U. S. 585, 596; *In re Johnson, Petitioner*, 167 U. S. 120, 126; *Lascelles* v. *Georgia*, 148 U. S. 537, 543, 545; *Cook* v. *Hart*, 146 U. S. 183, 190-192. It should be borne in mind, however, that all these cases were decided before the enactment of a national anti-kidnaping law.

In 1932, the Congress took cognizance of the increasing danger to the domestic tranquility and security of our [fol. 28] people by condemning as a criminal act the transportation in interstate commerce of any person unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and "held for ransom or reward". Act of June 22, 1932, c. 271, 47 Stat. 326. Our national legislature was not satisfied that the original Act was clear enough to assure the validity of federal prosecution in numerous instances where such prosecution would be questionable under the then existing form of the Act. Accordingly, the Anti-Kidnaping Act was forthwith amended in 1934; and more teeth were put into it. After the words "carried away by any means whatsoever and held for ransom or reward" were added the words, "or otherwise." The sole exception was made of the kidnaping of a minor by his or her parent. *No exception of law officers, state or federal, from the scope and coverage of the Act was provided for.* Act of May 18, 1934, c. 301, 48 Stat. 781, 18 U. S. C. 408a.

In *Gooch* v. *United States*, 297 U. S. 124, the Supreme Court rejected the contention that the words "ransom", and "reward" mean only pecuniary benefits and that the rule of *ejusdem generis* restricts the words "or otherwise". The opinion quoted from H. R. 1457, 73d Cong. 2d Sess., May 3, 1934, the statement that federal jurisdiction is extended under the Act "to persons who have been kidnaped and held, not only for reward, *but for any other reason*, except that a kidnaping by a parent of his child is specifically exempted." [Italics supplied.]

In *Chatwin* v. *United States*, 326 U. S. 455, 463, it was held that conviction for alleged violation of the federal anti-kidnaping Act could not be sustained in circumstances wherein a fifteen-year-old girl willingly was taken across

the state line for continuance of a "celestial" marriage relationship with a cultist, inasmuch as it was not established that she had been held for ransom, or reward, *or otherwise;* but the court declared that "comprehensive language was used [in the 1934 Act] to cover every possible variety of kidnaping followed by interstate transportation."

From the interpretation of the federal anti-kidnaping Act in the *Gooch* and *Chatwin* cases, we think it clear that the allegations of the petition in the case at bar charge a federal offense against the state officers who kidnaped and abducted the petitioner from Illinois to Michigan. In such circumstances, if the petitioner establishes the averments of his petition, the writ of *habeas corpus* should eventuate in his discharge. The issue involved here is not, as in the earlier cases before the enactment of the federal anti-kid- [fol. 29] naping statute as amended, a matter of comity between the states. A state may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of a federal criminal statute. The courts of the United States should uphold the constitutional guarantee of due process of law by all appropriate means within their lawful powers, including issuance in last resort cases of the writ of *habeas corpus.* Certainly, if evidence obtained by wire tapping be such "dirty business" as to be suppressed, and if every safeguard is to be placed against the securing of convicting evidence by unreasonable and unlawful search and seizure, a citizen, regardless of how depraved or vicious he may be, may not be seized, kidnaped and forcibly abducted from one state to another by police officers acting beyond their territorial jurisdiction in violation of a criminal law of the United States enacted to prevent kidnaping. Officers of the law are no less immune from the condemnation of the statute than are ordinary citizens; indeed, they should be held to strict accountability.

To uphold criminal acts of either state or federal police officers who violate an explicit federal statute, by permitting a citizen kidnaped by them to be brought to trial and punishment in a jurisdiction to which he has been forcibly brought without warrant of law, would in practical effect lend encouragement to the commission of criminal acts by those sworn to enforce the law. Obviously fear of criminal pun-

ishment has been an insufficient deterrent on the police officers involved in this case, if the averments of the petition be accepted as true. The petitioner is entitled to a hearing upon these allegations.[1]

[fol. 30] Accordingly, the cause will be remanded to the United States District Court for hearing upon the merits of the petition, with full opportunity to be afforded the petitioner to adduce evidence in support of the fact averments of his petition. Let the factual issues involved be determined by the district judge, and appropriate findings be filed by him.

DISSENTING OPINION

MILLER, Circuit Judge, dissenting. I am of the opinion that the judgment of the District Court dismissing the application should be affirmed upon the following grounds:

It does not appear "that the applicant has exhausted the remedies available in the courts of the State," which under

---

[1] In our view, we are privileged under the Supreme Court opinion in *Darr* v. *Burford*, 339 U. S. 200, to hold as we do that previous denial of petition for certiorari to the Supreme Court as a condition precedent to an application for a writ of *habeas corpus* addressed to the district court is unnecessary *in this case*, because of such "exceptional circumstances" found to exist here as to require prompt federal intervention. It appears that certain United States District Judges in the same district are upholding the action of state officers in forcibly abducting and kidnaping from other states and bringing, without warrant of law or extradition, persons charged with crime into the State of Michigan for trial. See *Hatfield* v. *Warden*, 88 F. Supp. 690, 691 (E. D. Mich.); *Ex parte Brown*, 90 F. Supp. 50 (E. D. Mich.). Moreover, the district judge in the instant case has ignored our decision in *Brown* v. *Frisbie*, 178 F. (2d) 271 (C. A. 6).

We think, therefore, that the course of this case should not be arrested on technical procedural grounds, but should be expedited by petition for certiorari to the Supreme Court for prompt review of our decision, if the highest tribunal deems it advisable to grant such petition. This would be the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases.

§ 2254, Title 28, U. S. Code is a necessary condition precedent to the granting of the application in this proceeding. *Darr* v. *Burford*, 339 U. S. 200; *Ex parte Hawk*, 321 U. S. 114. The statement of the Court in *Darr* v. *Burford*, *supra*, at p. 219, that "Nothing has been pleaded or proved to show that here exceptional circumstances exist to require prompt federal intervention" is equally applicable to this case. The petition complains of illegal confinement since February 21, 1942. The present action was not filed until March 14, 1950. The petition contains no allegation explaining the delay, makes no showing of "exceptional circumstances of peculiar urgency" (*Ex parte Hawk*, *supra*, at p. 117), and does not explain why the regular and orderly procedure in the State Court should not be followed before asking for federal intervention.

The application, coming after the trial and sentence in the state court proceedings, comes too late. The point now raised was available as a defense in the state court trial, but was not there raised or relied upon by appellant. It can not now be raised in a collateral proceeding in a federal court in a later attack on the state court judgment. *United States* v. *Brady*, 133 F. (2d) 476, 481, C. A. 4th, cert. denied, 319 U. S. 746, rehearing denied 319 U. S. 784; *Parker* v. *United States*, 184 F. (2d) 488, C. A. 4th; *Ex parte Spencer*, 228 U. S. 652, 660-661; *Friedberg* v. *United States*, 69 F. (2d) 170, C. A. 5th. See also *Robinson* v. *United States*, 144 F. (2d) 392, 396, C. A. 6th; *Woolsey* v. *Best*, 299 U. S. 1. Even if not treated as waived, it has not as yet been presented in any State Court proceeding available to the applicant. We can not assume that it would not receive as full consideration in such a State Court proceeding [fol. 31] as it would receive here, or that the applicant would not obtain full and prompt relief in such proceeding, if he is entitled to it.

This view of the case makes it unnecessary to consider the question discussed in the majority opinion, upon which I express no opinion. Nor does it in any way affect what rights, if any, the appellant may have against the arresting officers.

[fol. 32] IN THE UNITED STATES COURT OF APPEALS, 6TH CIRCUIT

[Title omitted]

PETITION FOR REHEARING AND OTHER RELIEF—Filed June 15, 1951

To the Honorable the United States
Court of Appeals—Sixth Circuit:

The Solicitor General of the State of Michigan respectfully petitions the Court to grant a rehearing in this cause, or, in the alternative, remand the record to the court below without prejudice to consideration by the District Judge of the matters and things hereinafter set forth as grounds for this application:

[fol. 33] First:

Although the State of Michigan affords an adequate remedy by way of corrective process for those who would on Federal constitutional grounds challenge the validity of a conviction and sentence of imprisonment as punishment for crime, the petitioner in this cause has never, in any court of the State, availed himself thereof, and hence has not exhausted his State remedies.

Second:

More specifically, the Solicitor General avers as follows:

1. The petitioner, Shirley, alias Floyd Collins, has never by motion for new trial or otherwise in the circuit court for the county of Genesee, Michigan, wherein on the 29th day of April, 1942, being then and there represented by competent counsel, he was duly convicted by a jury of first degree murder, raised the question of jurisdiction asserted in his pending petition for writ of habeas corpus, viz., that said court lacked jurisdiction to try him for murder committed in Genesee county, Michigan, because he had been illegally kidnapped by Michigan police officers in the state of Illinois and forcibly transported, against his will, and without a warrant of rendition in extradition proceedings, to the county of Genesee, state of Michigan, contrary to the Lindbergh Law of the United States.

2. Although the petitioner Collins has on several occasions applied to the Supreme Court of the State of Michigan for writs of mandamus, for leave to appeal, and for a writ of habeas corpus, he has never sought such relief on the ground first asserted in the District Court, viz., that the trial court lacked jurisdiction to try him for the criminal offense of murder, by virtue of the alleged fact that he had [fol. 34] been kidnapped by Michigan police officers and unlawfully transported in interstate commerce contrary to Federal law.

3. The Solicitor General has made a careful examination of the files and records of the Supreme Court of the State of Michigan in the following proceedings instituted in that Court by the petitioner, Floyd Collins or Shirley Collins, viz.,

Cal. No. 43748½, Mandamus proceedings brought by Collins on the 19th day of February 1947, to compel the trial judge to decide pending motions for new trial, and denied by the Supreme Court April 11, 1947.

Cal. No. 43822½, Mandamus proceedings brought by Collins on the 30th day of April 1947, to compel said trial judge to take action on a pending supplemental motion to reconsider the foregoing, and denied by the Supreme Court June 11, 1947; in this matter an application for rehearing was denied by the Supreme Court Oct. 13, 1947.

Cal. No. 44449½, Application for leave to appeal filed by Collins on or about the 13th day of December 1948, and denied by the Supreme Court on the 13th day of April 1949. This application sought review of the conviction and sentence of Collins, following trial by jury while represented by counsel, and of orders denying leave to file delayed motions for new trial.

Cal. No. 44524½, Petition for writ of habeas corpus, filed by Collins June 4, 1949, and denied by the Supreme Court June 22, 1949.

4. Such examination of the files and record aforesaid in the Supreme Court of the State of Michigan, reveals that [fol. 35] in the several proceedings listed above, the petitioner herein, Floyd or Shirley Collins, failed to raise the question now before this Honorable Court, based upon his claim that he was kidnapped across state lines. And such

examination further discloses that in such proceedings, and in the court of trial, Collins raised the following major points of law and of fact:

(a) that the opening statement of the prosecuting attorney, made to the jury during petitioner's trial for murder, was prejudicial and not based on facts;

(b) defendant's (petitioner here) common-law wife was allowed to testify against him;

(c) the verdict of the jury was contrary to law and against the weight of the evidence;

(d) the evidence was insufficient to establish that petitioner had committed the offense of murder in the first degree;

(e) the prosecuting attorney failed to endorse on the information the names of certain material witnesses;

(f) there was error in the charge;

(g) the petitioner did not have a fair trial;

(h) he was not accorded an oral hearing on his motions for new trial;

(i) he was tried upon an information filed by the prosecuting attorney rather than upon indictment by a grand jury;

(j) the trial court erred in the admission of testimony; and

(k) he was arrested, tried and convicted upon a defective complaint and warrant, inasmuch as said com-
[fol. 36] plaint was signed by a police officer and not by an eye-witness.

Wherefore, the Solicitor General, on behalf of the Attorney General of the State of Michigan, as well as the respondent warden, most respectfully prays as follows:

I. If the Court deem such an order necessary, that the time to apply for a rehearing herein be extended a reasonable length of time to enable the Solicitor General to obtain and file with the clerk of this Court exemplified copies of the records of the trial court and of the Supreme Court of the State of Michigan (which files and records are extremely voluminous).

II. That a rehearing be granted.

III. In the alternative, that the order remanding the cause to the court below, provide that the District Judge, in carrying out the mandate of this Court be permitted to

consider the question whether the petitioner for habeas corpus has exhausted his state remedies.

Attached hereto, in support of the foregoing petition, is a certificate of the clerk of the Supreme Court of the State of Michigan, together with certified copies of the several orders above referred to.

(S.) Edmund E. Shepherd
Solicitor General of the
State of Michigan
Counsel for Appellee

[fol. 37] Supporting Certificate

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that I have carefully examined the files and records of said Court for the purpose of ascertaining what if any proceedings have been instituted therein by one Floyd Collins, alias Shirley Collins, since the 8th day of May 1942, to obtain a review or other relief touching his conviction in the circuit court for the county of Genesee, State of Michigan, and that the several proceedings scheduled in the foregoing application, constitute all of the proceedings brought by Floyd or Shirley Collins during that period of time.

(S.) Jay Mertz,
Clerk of the Supreme Court of
the State of Michigan

Certificate of Counsel

Edmund E. Shepherd, Solicitor General of the State of Michigan, counsel for appellee, hereby certifies that in his judgment the foregoing petition for rehearing is well founded and is not interposed for delay.

(S.) Edmund E. Shepherd
Solicitor General of the
State of Michigan

[fol. 38] (Certified Copies of Orders of the Supreme Court of the State of Michigan, attached as exhibits hereto.)

At a session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in

the City of Lansing, on the eleventh day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, *Chief Justice.* Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, *Associate Justices.*

437481/2

FLOYD COLLINS, Plaintiff,

vs.

PAUL V. GADOLA, Genesee Circuit Judge, Defendant

In this cause a petition is filed by plaintiff for the allowance of an order to show cause, and a brief in opposition thereto having been filed by defendant, and due consideration thereof having been had by the Court, It is ordered that the petition be and the same is hereby denied.

[fol. 39] STATE OF MICHIGAN, ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

At a session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the eleventh day of June, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, *Chief Justice.* Henry M. Butzel, George E. Bushnell, Edward M. Sharpe,

Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, *Associate Justices.*

[fol. 40] 43822½

FLOYD COLLINS, Plaintiff,

vs.

PAUL V. GADOLA, Genesee Circuit Judge, Defendant

In this matter a petition is filed for the allowance of an order to show cause, and a brief in opposition thereto having been filed, and due consideration thereof having been had by the Court, It is ordered that the petition be and the same is hereby denied for the reason that application for a new trial was denied on February 25, 1947, and review can only be had by application for leaves to appeal therefrom. The People are directed to serve petitioner with copy of opinion and order on new trial proceedings and file proof of service herein.

STATE OF MICHIGAN—SS.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

[fol. 41] At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the thirteenth day of April, in the year of our Lord one thousand nine hundred and forty-nine.

Present the Honorable Edward M. Sharpe, *Chief Justice.* George E. Bushnell, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Henry M. Butzel, Leland W. Carr, *Associate Justices:*

44449½

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff,

vs.

SHIRLEY COLLINS, Defendant

In this cause an application is filed by defendant for leave to appeal from the sentence of the Circuit Court for the County of Genesee, and a brief in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby denied.

[fol. 42] STATE OF MICHIGAN—ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twenty-second day of June, in the year of our Lord one thousand nine hundred and forty-nine.

Present the Honorable Edward M. Sharpe, *Chief Justice*. George E. Bushnell, Emerson R. Boyles, Neil R. Reid, Walter H. North, John R. Dethmers, Henry M. Butzel, Leland W. Carr, *Associate Justices*.

[fol. 43]

44524½

In the Matter of SHIRLEY COLLINS

Petition for writ of habeas corpus is denied. Defendant's application for leave to appeal was denied by this

Court on April 13, 1949. The complaint in this case substantially complied with the statute. See Gillespie's Criminal Law and Procedure, Vol. 1, sec. 131-2. Under the law of Michigan the complaint need not be in writing. People v. Clark, 33 Mich. 112; Turner v. People, 33 Mich. 363; People v. Hare, 57 Mich. 505; and cases referred to in footnotes. But even if there had been any error or insufficiency in the magistrate's examination or even as claimed, a lack of showing of probable cause, respondent made no objection upon being bound over or at the trial. See People v. Dowd, 44 Mich. 488, which case has been followed frequently in this Court as late as People v. Bonneau, 323 Mich. 237. The case is also ruled by In re Krusiewicz, 263 Mich. 74-76, and In re Reno, 321 Mich. 497, and cases there cited.

Under the facts above, the writ of habeas corpus and ancillary certiorari are denied.

STATE OF MICHIGAN—ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

[fol. 44] In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of June, in the year of our Lord one thousand nine hundred and fifty-one.

Jay Mertz, Clerk.

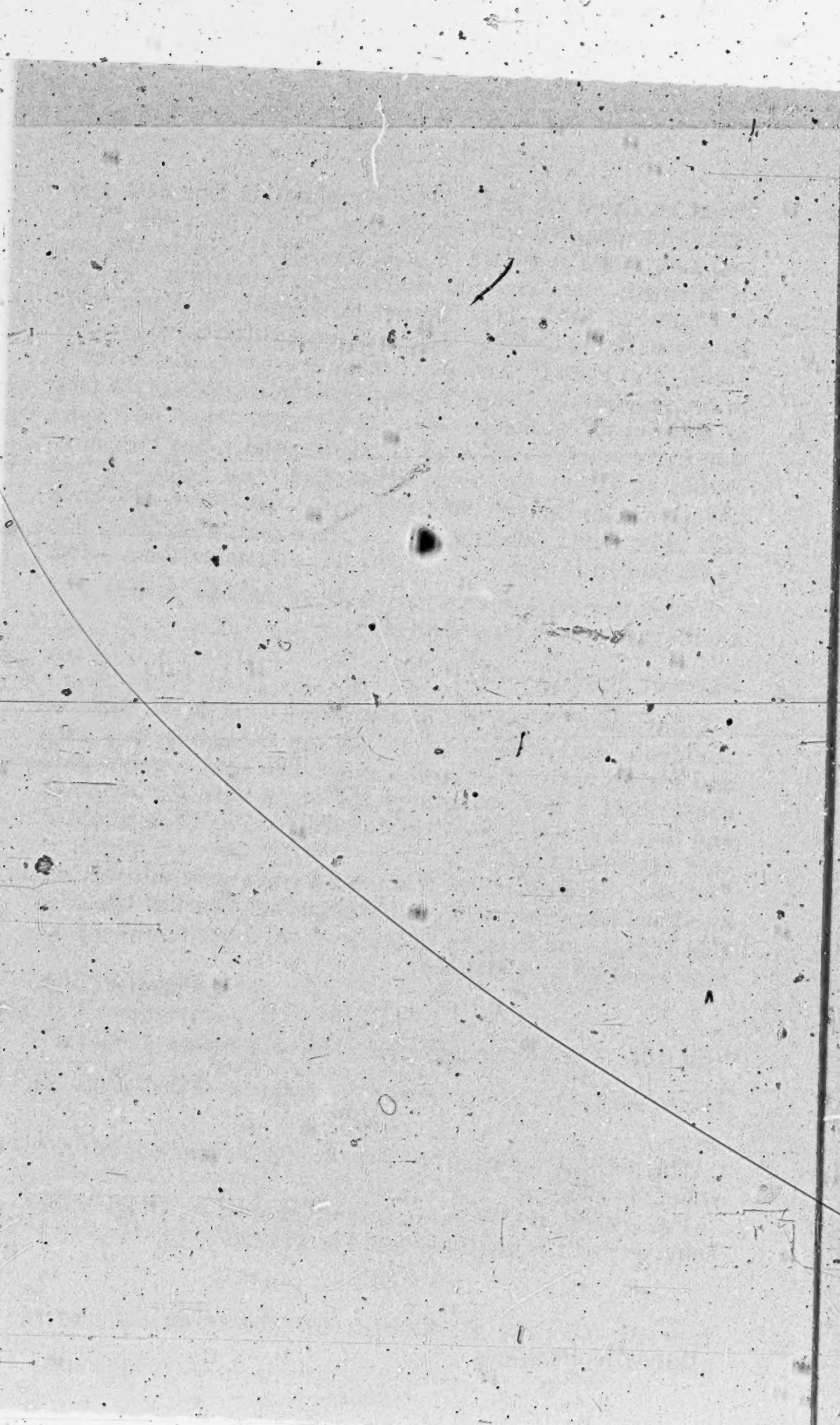
[fol. 45] IN UNITED STATES COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—Filed June 25, 1951

The petition on behalf of appellee for rehearing, or other relief, is denied.

For reasons stated in his dissenting opinion, Judge Miller believes that the petition should be granted.

[fol. 46] Clerk's Certificate to foregoing transcript omitted in printing.



[fol. 47] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 331

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 5, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office Supreme Court, U. S.
FILED
SEP 17 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 331

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN,

PETITIONER,

v.

SHIRLEY COLLINS

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, and Supporting Brief

Frank G. Millard
Attorney General of Michigan

Edmund E. Shepherd
Solicitor General of Michigan

Counsel for Petitioner

FRANKLIN DE KLEINE COMPANY, STATE PRINTERS, LANSING, MICHIGAN

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SUPREME COURT OF THE UNITED STATES

October Term, 1951

No.——

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN, PETITIONER,

v.

SHIRLEY COLLINS

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, and Supporting Brief

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Julian N. Frisbie, Warden, State Prison of Southern Michigan, Jackson, Michigan, by Edmund E. Shepherd, Solicitor General of the State of Michigan, his counsel, respectfully prays for a writ of certiorari addressed to the United States Court of Appeals for the Sixth Circuit directing it to certify to this Honorable Court for review and determination the record in a certain cause, No. 11269, entitled "Shirley Collins, Appellant, v. Julian N. Frisbie, Warden, State Prison of Southern Michigan, Jackson, Michigan, Appellee." The transcript of the record in the case,

including the proceedings in the District Court of the United States for the Eastern District of Michigan, Southern Division, and in the Court below, is furnished herewith in accordance with the Rules of this Court.

I.

A Summary and Short Statement of the Matter Involved.[*]

On the 29th day of April, 1942 (22), following trial by jury in the circuit court for the county of Genesee, State of Michigan, Shirley Collins was duly convicted of murder in the first degree,[1] and sentenced to life imprisonment. Throughout such proceedings he had the benefit of counsel.

Eight years, ten months, and approximately 14 days thereafter, on the 14th day of March, 1950, the defendant (so designated for clarity), without first raising the question in any court of the State, filed in the District Court of the United States for the Eastern District of Michigan his petition (1-3) for a writ of habeas corpus,[2] on the ground that Michigan lacked jurisdiction to try him for a criminal offense, or hold him under the life sentence imposed, because prior to arraignment and trial he had been kidnapped by Michigan officers in the State of Illinois, brutally treated and transported in interstate commerce to the state of

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[*] Unless otherwise plainly indicated, numbers in parentheses refer to pages of the printed transcript of record.

[1] Michigan Penal Code, § 316, CL 1948, § 750.316, Mich. Stat. Ann. (Henderson) § 28.548.

[2] 28 U.S.C., § 2254.

Michigan, contrary to the Lindberg Law,[3] and without appropriate proceedings in extradition.

From an order (11) denying the writ, the defendant duly appealed (12), and the United States Court of Appeals for the Sixth Circuit, in a judgment (13) entered the 28th day of May, 1951, reversed the judgment of the District Court and remanded the cause for further proceedings in accordance with an opinion (14-20) filed the same day, *Collins v. Frisbie*, 189 F. 2d 464, one judge dissenting (20), 189 F. 2d at 468.

The prevailing opinion held, in substance, (1) that where it is alleged in a petition for habeas corpus that petitioner had been illegally arrested and maltreated in Chicago, Illinois, by two Michigan police officers and he had thereafter been forcibly kidnapped by them and returned to Michigan and illegally imprisoned, the allegations of the petition charged a federal offense against state officers who kidnapped and abducted petitioner, and petitioner would be entitled to a hearing upon those allegations, and, in event averments were proved, to discharge; (2) that a State may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of a federal criminal statute; and (3) under *Darr v. Burford*, 339 U. S. 200, a previous denial of a petition for certiorari from this Court as a condition precedent to an application for writ of habeas corpus addressed to the district court is unnecessary *in this case*, because of such "exceptional circumstances" found to exist here as to require prompt federal action (20, note 1), 189 F. 2d at 468, note 1.

[3] 18 U.S.C., § 1201.

And the Court, in note 1 (20), made the following suggestion:

> "We think, therefore, that the course of this case should not be arrested on technical, procedural grounds, but should be expedited by petition for certiorari to the Supreme Court (of the United States) for prompt review of our decision, if the highest tribunal deems it advisable to grant such petition. This would be the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases."

The dissenting opinion of Judge Miller was based on the ground it did not appear that the applicant had exhausted his state remedies, § 2254, Title 28, U. S. C., *Darr v. Burford, supra,* 339 U. S. 200, *Ex Parte Hawk,* 321, U. S. 114; that the petition contains no allegation explaining the delay from February 21, 1942, the date of arrest, to March 14, 1950, when the petition for habeas corpus was filed, makes no showing of "exceptional circumstances of peculiar urgency," and does not explain why the regular and ordered procedure in the State Court should not be followed before asking for federal intervention; the application came too late, since the point now raised was available as a defense in the state court trial, but was not there raised or relied upon by appellant. "Even if not treated as waived, it has not as yet been presented in any State court proceeding available to the applicant."

A petition (22) for rehearing and other relief, filed by the Solicitor General of the State of Michigan on the 15th day of June, 1951, was denied (29) June 25, 1951.

The petition for rehearing and other relief alleges in substance and effect that the defendant had never, in the

trial court, or in the Supreme Court of the State of Michigan, raised the point that the court of trial lacked jurisdiction because of illegal transportation from Illinois to Michigan without proceedings in extradition (22-29), although defendant had on numerous occasions raised other questions of alleged error, in mandamus proceedings, on application for leave to appeal, and in petition for writ of habeas corpus.

The Solicitor General sought (24) and was denied (29) an order affording him reasonable time to obtain and file exemplified copies of the records of the State Courts, granting a rehearing, and "in the alternative, that the order remanding the cause to the court below, provide that the District Judge, in carrying out the mandate of this Court be permitted to consider the question whether the petitioner for habeas corpus has exhausted his state remedies."

II

Statement Disclosing Basis of Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

This application for certiorari is made within the 90 days prescribed by law. Judgment was entered on the 28th day of May, 1951. A petition for rehearing was filed June 15, 1951, as required by Rule 28 of the 6th Circuit. It was denied on the 25th day of June, 1951. 28 U.S.C. § 2101 (c).

The court below has rendered a decision in conflict with decisions of other United States courts of appeals or other

circuit courts of appeals;[4] it has decided an important question of federal law in a way probably in conflict with applicable decisions of this court;[5] and it has decided an important question of federal law which, if it has not been, should be settled by this Court.

III

The Questions Presented.

1. Where a person accused of murder under process legally issued from a competent Michigan court, has been duly convicted and sentenced after trial by jury, with full benefit of counsel, must it be held, as the court below decided, that the jurisdiction of the Michigan trial court was rendered void ab initio by virtue of the manner in which such accused person had been transported by Michigan police officers from the state of Illinois into the state of Michigan by kidnapping in violation of a federal law, 18 U.S.C. § 1201, and is the prisoner so convicted of murder, subject to discharge some 8 years later on a writ of habeas corpus issued from a District Court of the United States?

2. Whether in the pending cause the applicant for a writ of habeas corpus from a federal district court, can be deemed to have "exhausted the remedies available in the courts of the State," 28 U.S.C. § 2254, or whether he has pleaded or proved exceptional circumstances of peculiar

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[4]

Bozel v. Hudspeth, 126 F. 2d 585, 588; Stamphill v. Johnston, 136 F. 2d 291, 292, cert. denied, 320 U.S. 760; and others cited in supporting brief.

[5]

Ker v. Illinois, 119 U.S. 436; Mahon v. Justice, 127 U.S. 700; In re Johnson, 167 U.S. 120, 126; and please see Annotation 165 ALR at 948 and decisions of this Court there cited.

urgency to require prompt federal action, *Darr v. Burford*, 339 U. S. 200, it appearing (22-29) that while Shirley Collins has sought relief in the Michigan courts by moving for new trial and seeking from the Supreme Court of Michigan leave to appeal, as well as writs of mandamus and habeas corpus, he has never in any of such state proceedings raised the question of the manner in which he now alleges he was transported by state police officers from Illinois to Michigan.

IV

Reasons Relied on for Allowance of Writ.

First: The United States Court of Appeals for the Sixth Circuit has rendered a decision in conflict with decisions of other United States Courts of Appeals or other Circuit Courts of Appeals.

Second: It has decided an important question of federal law in a way probably in conflict with applicable decisions of this Court.

Third: It has decided an important question of federal law which, if it has not been, should be settled by this Court.

Fourth: The United States Court of Appeals for the Sixth Circuit, in its opinion (20, note 1), 189 F. 2d 464, 468 (1), has most respectfully suggested that an application for writ of certiorari from this Court "would be the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases."

Fifth: The court below erred in holding that where it is alleged in a petition for habeas corpus to be issued from a federal district court, that petitioner had been illegally arrested and maltreated by two Michigan police officers and had thereafter been forcibly kidnapped by them and returned to Michigan and illegally imprisoned, in violation of federal law, 18 U.S.C. § 1201, petitioner, in event such averments were proved, would be entitled to discharge.

Sixth: The court below erred in holding that a State may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of 18 U.S.C. § 1201.

Seventh: The court below erred in holding in substance and effect, if not in express words, that the applicant for habeas corpus need not show that he had exhausted his state remedies, and in rejecting, on motion for rehearing, the State's claim that although the applicant for habeas corpus had sought appropriate relief in the courts of the State, he had not raised the question of jurisdiction of the trial court, in such state proceedings.

Eighth: The court below erred in holding that exceptional circumstances of peculiar urgency existed to require prompt federal intervention.

Ninth: The court below erred in reversing the judgment of the District Court of the United States for the Eastern District of Michigan.

Tenth: The court below erred in denying the petition (22) for rehearing and other relief.

Wherefore, your petitioner respectfully prays that this Court grant a writ of certiorari under 28 U.S.C. § 1254 (1),

and Supreme Court Rule 38, to be issued out of and under the seal of this Court, directed to the United States Court of Appeals for the Sixth Circuit, to remove therefrom for review here the record in the cause therein pending, No. 11269, wherein your petitioner is appellee and the respondent is appellant, that the opinion and judgment of the United States Court of Appeals for the Sixth Circuit, and its order denying rehearing and other relief may be reviewed by this Court, and that the petitioner may have such other and further relief in the premises as to this Court may seem equitable and just.

Frank G. Millard
Attorney General of the State of Michigan

Edmund E. Shepherd
Solicitor General of the State of Michigan

Counsel for Petitioner

The Capitol,
Lansing, Mich.

BRIEF AND ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of Court Below.

The opinion of the court below is reported as *Collins v. Frisbie*, 189 F. 2d 464, and it appears in the printed transcript of record (14).

II

Statement of the Case.

A concise narration of proceedings and facts essential to a clear understanding of the questions presented, which require no repetition, will be found in the foregoing petition for certiorari under its first heading, *ante*, p. 2.

III

The Argument.

Point One

Power of a Michigan court of competent jurisdiction to try and upon conviction by jury punish the respondent for murder in the first degree, would not be destroyed if, as alleged, the accused had been seized in Illinois and forcibly transported in interstate commerce to Michigan by her police officers in violation of the Federal Kidnapping Act, 18 U.S.C. § 1201.

The authorities, based upon decisions of this Court, *infra*, collated in 165 ALR 947, recognize the universal rule "that where a person accused of crime is found within the territorial jurisdiction wherein he is so charged and is held under process legally issued from a court of that jurisdiction, neither the jurisdiction of the court nor the right to put him on trial for the offense charged is impaired by the manner in which he was brought from another jurisdiction, whether by kidnapping, illegal arrest, abduction, or irregular extradition proceedings."

This Court in early opinions applied or otherwise approved the doctrine and has never overruled such decisions.

Ker v. Illinois (1886), 119 U. S. 436;

Mahon v. Justice (1888), 127 U. S. 700;

Cook v. Hart (1892), 146 U. S. 183;

Lascelles v. Georgia (1893), 148 U. S. 537;

In re Johnson (1897), 167 U. S. 120;

Adams v. New York (1904), 192 U. S. 585;

Pettibone v. Nichols (1906), 203 U. S. 192.

And, with the recent exception of the court below,[6] United States courts of appeals and circuit courts of appeals, in the vast majority of cases, have adhered to the principle that the presence of an accused within the territorial limits of the court wherein he is charged (sometimes state, sometimes federal), gives such a court complete jurisdiction over the defendant's person regardless of how his presence was secured.

Bozel v. Hudspeth (1942), 126 F. 2d 585, 588;

Stamphill v. Johnson (1943), 136 F. 2d 291; cert. denied, 320 U. S. 766;

McMahan v. Hunter (1945), 150 F. 2d 498; cert. denied, 326 U. S. 783;

Sweet v. Howard (1946), 155 F. 2d 715, 717;

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[6]

Cf. Robinson v. United States, 144 F. 2d 392, involving the Removal Statute, 18 U.S.C. § 591, and holding that the presence of the defendant in the District Court of trial gave it complete jurisdiction over his person, regardless of how his presence was secured.

Chandler v. United States (1949), 171 F. 2d 921, 934; cert. denied, 336 U. S. 918;

Pierce v. Smith (1949), 175 F. 2d 193;

Gillars v. United States (1950), 182 F. 2d 962, 972.

Thus becomes apparent the conflict between the decision of the court below in the pending cause, and those of other circuits.

While, as correctly noted by the lower court (18), federal law now prescribes punishment for whoever knowingly transports in interstate commerce any person who has been kidnapped, 18 U.S.C. § 1201, and though it exacts the penalty of death whenever maltreatment of the victim is established, it does not necessarily follow, when state police officers forcibly transport against his will an accused person into the territorial confines of a court wherein he is lawfully charged with murder, that consequently the respondent becomes constitutionally immune from prosecution; and certainly no federal statute, including the Kidnapping Act, *supra*, maps procedure to restore the guilty party to the asylum state.

It should go without saying that, if defendant's allegations of fact (2-4) were true, Michigan would never condone the course of misconduct pursued by over-zealous police officers, but this does not mean that if the Federal Kidnapping Act were so violated, the convicted offender against Michigan's law must go free.

If because of acts of Michigan police officers, in violation of federal law, the Michigan trial court forfeited jurisdiction over his person, and should the District Court be required to release him on habeas corpus, Shirley Collins could never be retried and punished for murder until he

voluntarily returns to the asylum state of Illinois there to await extradition proceedings; and since there exists no authority under federal or state law to compel such action, he could escape the consequences of his crime by the simple expedient of remaining in Michigan. We doubt very much that the Congress intended such consequences to flow from a violation of the statute, or that this Court would be inclined to place so loose a construction upon a law designed "to assist the states in stamping out this growing and sinister menace of kidnapping," *Chatwin v. United States*, 326 U. S. 455, 463. Clearly, we think, the Federal Kidnapping Act was not passed for the purpose of strangling the exercise of state sovereignty in bringing criminals to justice. And the penalty of death for the individual suffices to maintain the integrity of federal authority.

We, therefore, respectfully submit that the question presented is of sufficient importance to justify this Court in opening its doors to the State of Michigan.

Point Two

The applicant for habeas corpus has not exhausted his state remedies, nor has he pleaded or proved existence of exceptional circumstances of peculiar urgency which require prompt federal intervention.

The petitioner in *Darr v. Burford, Warden*, 339 U. S. 200, a state prisoner, applied to a Federal District Court for habeas corpus and was denied the writ for his "omission to apply here for certiorari from the state court's denial of habeas corpus." This Court, deeply concerned, held, upon authority of *Ex Parte Hawk*, 321 U. S. 114, that ordinarily an application for habeas corpus by one detained under a state court judgment of conviction for crime will

be entertained by a federal court only after all state remedies available, including all appellate remedies in the state courts, have been exhausted and review has been denied by this Court, and that in § 2254 of the 1948 recodification of the Judicial Code, Congress accepted the rule of the *Hawk* case as a sound rule to guide consideration of habeas corpus in federal courts.

Further, it was decided, p. 219, the petitioner had not sustained the burden of showing that circumstances of peculiar urgency existed to require prompt federal intervention.

1. The narrow and perplexing question involved in *Darr v. Burford, supra,* is not here presented for consideration, for in the case at bar the applicant for habeas corpus has taken advantage of no remedy offered him by the State of Michigan.

As recognized by this Court,[7] as well as the United States Court of Appeals for the Sixth Circuit,[8] Michigan's corrective process where claims of constitutional infringement are made, comprises a delayed motion for new trial and in the event of an adverse decision, an application for leave to appeal to the state's highest court. But the defendant did not choose to exercise that privilege for the purpose of asserting his present contention.

In his petition for habeas corpus (1-3), filed in the Federal District Court 8 years after his conviction for murder, Collins fails to allege that he had a trial by jury, with full

[7]
De Meerleer v. Michigan, 329 U.S. 663.

[8]
Whalen v. Friable, 185 F. 2d 607.

benefits of counsel, or that he raised a challenge to the trial court's jurisdiction, or that he moved for a new trial on that ground, or that he appealed to the Michigan Supreme Court on the basis of official violation of the Federal Kidnapping Act.

It appears from the petition (22-25) for rehearing and other relief, filed in the court below, however, that Shirley Collins has never by motion for new trial or otherwise raised in the courts of Michigan the question of jurisdiction presented in his petition for haeas corpus (22).

It further appears (23) that although Collins has on several occasions applied to the Supreme Court of the State of Michigan for writs of mandamus, for leave to appeal, and for a writ of habeas corpus, he has never invoked these remedies on the ground that the trial court lacked jurisdiction to try him for the criminal offense of murder, by virtue of the alleged fact that he had been kidnapped by Michigan police officers and transported in interstate commerce contrary to Federal law. A complete summary of such state proceedings will be found in the printed transcript of the record (23-29).

2. We respectfully submit that in the circumstances disclosed by the record it cannot be said that the defendant Collins has met the burden of pleading or proving the existence of exceptional circumstances of peculiar urgency which require prompt federal intervention, *Darr v. Burford, supra*, 339 U. S. 200.

Surely when, as in this cause, an accused person neglects through his counsel promptly to raise the question of jurisdiction in the initial stages of his prosecution, or during the course of his trial by jury, or in a motion for new trial, or on appeal to the State Supreme Court, and when, as

here, he allows 8 years to elapse before asserting such a claim, there exists no emergency.

3. There remains our duty to inform the Court, although the fact does not appear in the present record, that upon remand of this cause from the court of appeals to the district court, a hearing was held, witnesses were produced, testimony was given on both sides, and the issue of fact, whether the police officers kidnapped Collins and transported him into the state, is about to be resolved by the federal court.

This does not, however, we respectfully submit, render moot the questions here presented, for it is our position that the District Court is without power or authority to resolve such issues of fact unless or until it clearly appears that all state remedies have been exhausted by the defendant.

In short, it is our firm belief that the vital question before this Court at the present time, involves Michigan's sovereignty exercised in bringing to justice persons accused of criminal offenses, and in providing adequate remedies for the correction of errors committed by her courts.

Unless Michigan is to lose such sovereign powers entirely, it is for her courts to resolve the issues of fact in this case.

IV

Conclusion.

We would in conclusion emphasize the importance of this case. It reveals a conflict in decisions of courts of appeal; the court below has decided an important question

of federal law in a way probably in conflict with applicable decisions of this Court; if such a question is open here, it should be decided; and finally, our application for certiorari seems to the court below (20) to be "the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases."

We, therefore, respectfully pray that the writ of certiorari issue herein.

Respectfully Submitted,

Frank G. Millard
Attorney General of Michigan

Edmund E. Shepherd
Solicitor General of Michigan

Counsel for Petitioner

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SUPREME COURT OF THE UNITED STATES

October Term, 1951

No. 331

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN,
PETITIONER,

vs.

SHIRLEY COLLINS

On writ of certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR PETITIONER

Frank G. Millard
Attorney General of the
State of Michigan

Edmund E. Shepherd
Solicitor General of Michigan

Daniel J. O'Hara
Assistant Attorney General

Counsel for Petitioner

FRANKLIN DE KLEINE COMPANY, STATE PRINTERS, LANSING, MICHIGAN

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SUPREME COURT OF THE UNITED STATES

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No. 331

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vs.

SHIRLEY COLLINS

On writ of certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER

I

Opinion of Court Below.

The opinion of the court below is reported as *Collins v. Frisbie, Warden*, 189 F. 2d 464, and it appears in the printed transcript of record (14) together with a dissenting opinion written by Circuit Judge Miller (20). The findings of fact and conclusions of law of the district

court (order denying writ of habeas corpus) appear at pages 11-12 of the record. [1]

II

Jurisdiction.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered May 28, 1951 (14), and a petition (22) for rehearing and other relief, filed June 15, 1951, was denied June 25, 1951 (29). The petition for a writ of certiorari filed September 17, 1951 was granted November 5, 1951 (30) in an order transferring the case to the summary docket. The jurisdiction of this Court rests upon 28 U.S.C. § 1254 (1), 1948 revision.

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[1] Unless otherwise plainly indicated by the context, numbers in parentheses throughout this brief refer to pages of the printed transcript of record.

III

The Questions Presented.

1.

Where a person accused of murder under valid process issued from a Michigan circuit court of competent jurisdiction,[2] has been duly convicted of such offense in the "first degree,"[3] after a fair and impartial trial by jury, during which all fundamental rights guaranteed by the Due Process Clause of the Fourteenth Amendment were preserved, must it be held, as the court below decided, 189 F. 2d 464, that the jurisdiction of the Michigan trial court would be rendered void ab initio upon proof of the fact alleged in defendant's petition for writ of habeas corpus (3-5), that prior to his trial such accused person had been unlawfully transported from the state of Illinois into the state of Michigan, following his illegal arrest, detention, maltreatment and forcible kidnapping by two Flint, Michigan, police officers, all in violation of the Federal Kidnapping Act, 18 U.S.C. § 1201, and is a

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[2]

Under Michigan Law, prosecution for felony is instituted in circuit court upon filing an information by the prosecuting attorney, Mich. Comp. Laws 1948, § 767.40, Mich. Stat. Ann. (Henderson) § 28.980, after a proper return is filed by an examining magistrate following the issuance of his warrant authorizing arrest, a preliminary examination or waiver thereof by the accused, and a determination therefrom that an offense not cognizable by a justice of the peace has been committed and there is probable cause for charging the defendant therewith and binding him over for trial, Mich. Comp. Laws 1948, § § 766.1, 766.3, 766.4, 766.13, Mich. Stat. Ann. (Henderson), § § 28.919, 28.921, 28.922 and 28.931.

[3]

Mich. Penal Code, §§ 316-318, Mich. Comp. Laws 1948 §§ 750.316-750.318, Mich. Stat. Ann. (Henderson) §§ 28.948-28.950.

state prisoner so convicted of murder, subject to discharge on a writ of habeas corpus issued from a district court of the United States pursuant to 28 U.S.C. § 2254?[4]

2.

Whether in the pending cause, the applicant for a writ of habeas corpus from a federal district court, can properly be deemed to have "exhausted the remedies available in the courts of the state," 28 U.S.C. § 2254, or whether he has pleaded exceptional circumstances of peculiar urgency sufficient to require prompt federal action, it appearing (22-25) that while Shirley Collins has sought relief in the Michigan courts by moving for new trial and applying to the Supreme Court of the State of Michigan for leave to appeal, as well as for writs of mandamus and habeas corpus, he has never in any of such state proceedings, raised the question arising from the manner in which he now alleges, he was transported by Michigan state police officers from Illinois into Michigan, nor has he ever claimed in the courts of Michigan such a denial of Due Process guaranteed by the Fourteenth Amendment.

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[4]

This question may also, we think, be premised upon a fair inference drawn from respondent's subsequent conviction by a jury, that he had fled from Michigan's justice and was found in Illinois.

IV

Statute and Constitutional Provisions Involved

1

Federal Constitution,

Article IV, § 2 (2):

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

Tenth Amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Due Process Clause, 14th Amendment:

"nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

2

Federal Laws:

Federal Kidnapping Act:[5]

"(a) Whoever knowingly transports in interstate or foreign commerce, any person who has been unlaw-

[5]

47 Stat. 326; 48 Stat. 781; 18 U.S.C. § 1201.

fully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed.

(b) The failure to release the victim within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttal presumption that such person has been transported in interstate or foreign commerce.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished as provided in subsection (a). June 25, 1948, c. 645, 62 Stat. 760."

Interstate Rendition of Fugitive from Justice:[6]

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or

[6] 62 Stat. 822; 18 U.S.C. § 3182.

Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged. June 25, 1948, c. 645, 62 Stat. 822."

Habeas Corpus — State Custody:[7]

"An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

"An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented. June 25, 1948, c. 646, 62 Stat. 967."

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[7] 62 Stat. 967; 28 U.S.C. § 2254.

V

Statement of the Case.

On the 29th day of April, 1942 (22), following trial by jury in the circuit court for the county of Genesee, State of Michigan, Shirley Collins was duly convicted of murder in the first degree,[8] and sentenced to life imprisonment. Throughout such proceedings he had the benefit of counsel.

Eight years, ten months, and approximately 14 days thereafter, on the 14th day of March, 1950, the defendant (so designated for clarity), without first raising the question in any court of the State, filed in the District Court of the United States for the Eastern District of Michigan his petition (1-3) for a writ of habeas corpus,[9] on the ground that Michigan lacked jurisdiction to try him for a criminal offense, or hold him under the life sentence imposed, because prior to arraignment and trial he had been kidnapped by Michigan officers in the State of Illinois, brutally treated and transported in interstate commerce to the state of Michigan, contrary to the Federal Kidnapping Act[10] and without appropriate proceedings in extradition.

From an order (11) denying the writ, the defendant duly appealed (12), and the United States Court of Appeals

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[8]

Michigan Penal Code, § 316, CL 1948, § 750.316, Mich. Stat. Ann. (Henderson) § 28.548.

[9]

28 U.S.C., § 2254.

[10]

18 U.S.C., § 1201.

for the Sixth Circuit, in a judgment (13) entered the 28th day of May, 1951, reversed the judgment of the District Court and remanded the cause for further proceedings in accordance with an opinion (14-20) filed the same day, *Collins* v. *Frisbie*, 189 F. 2d 464, one judge dissenting (20), 189 F. 2d at 468.

The prevailing opinion held, in substance, (1) that where it is alleged in a petition for habeas corpus that petitioner had been illegally arrested and maltreated in Chicago, Illinois, by two Michigan police officers and he had thereafter been forcibly kidnapped by them and returned to Michigan and illegally imprisoned, the allegations of the petition charged a federal offense against state officers who kidnapped and abducted petitioner, and petitioner would be entitled to a hearing upon those allegations, and, in event averments were proved, to discharge; (2) that a State may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of a federal criminal statute; and (3) under *Darr* v. *Burford*, 339 U.S. 200, a previous denial of a petition for certiorari from this Court as a condition precedent to an application for writ of habeas corpus addressed to the district court is unnecessary *in this case*, because of such "exceptional circumstances" found to exist here as to require prompt federal action (20, note 1), 189 F. 2d at 468, note 1.

And the Court, in note 1 (20), made the following suggestion:

> "We think, therefore, that the course of this case should not be arrested on technical, procedural grounds, but should be expedited by petition for certiorari to the Supreme Court (of the United States) for prompt review of our decision, if the highest tribu-

nal deems it advisable to grant such petition. This would be the most expeditious route for final solution of what would seem to be an urgently practical problem in the administration of justice in certain criminal cases."

The dissenting opinion of Judge Miller was based on the ground it did not appear that the applicant had exhausted his state remedies, § 2254, Title 28, U. S. C., *Darr* v. *Burford, supra,* 339 U. S. 200, *Ex Parte Hawk,* 321 U. S. 114; that the petition contains no allegation explaining the delay from February 21, 1942, the date of arrest, to March 14, 1950, when the petition for habeas corpus was filed, makes no showing of "exceptional circumstances of peculiar urgency," and does not explain why the regular and ordered procedure in the State Court should not be followed before asking for federal intervention; the application came too late, since the point now raised was available as a defense in the state court trial, but was not there raised or relied upon by appellant. "Even if not treated as waived, it has not as yet been presented in any State court proceeding available to the applicant."

A petition (22) for rehearing and other relief, filed on the 15th day of June, 1951, was denied (29) June 25, 1951.

The petition for rehearing and other relief alleges in substance and effect that the defendant had never, in the trial court, or in the Supreme Court of the State of Michigan, raised the point that the court of trial lacked jurisdiction because of illegal transportation from Illinois to Michigan without proceedings in extradition (22-29), although defendant had on numerous occasions raised other questions of alleged error, in mandamus proceedings, on application for leave to appeal, and in petition for writ of habeas corpus.

The petitioner sought (24) and was denied (29) an order affording him reasonable time to obtain and file exemplified copies of the records of the State Courts, granting a rehearing, or "in the alternative, that the order remanding the cause to the court below, provide that the District Judge, in carrying out the mandate of this Court be permitted to consider the question whether the petitioner for habeas corpus has exhausted his state remedies."

VI

Summary of the Argument.

First:

Michigan's jurisdiction to accuse, try, and upon conviction punish Shirley Collins for murder, was not impaired by the alleged misconduct of over-zealous police officers in arresting, maltreating and transporting respondent from the asylum State of Illinois to the State of Michigan for the sole purpose of compelling him to face a fair and impartial trial under adequate constitutional safeguards:

1. The doctrine is sustained in an unbroken line of this Court's decisions,[11] followed, with possibly one excep-

[11]

Ker v. Illinois, 119 U.S. 436; Mahon v. Justice, 127 U.S. 700; Cook v. Hart, 146 U.S. 183; Lascelles v. Georgia, 148 U.S. 537; In re Johnson, 167 U.S. 120; Pettibone v. Nichols, 203 U.S. 192.

tion,[12] by federal courts of appeals,[13] and by courts of last resort in the several states.[14]

2. The principles which controlled such decisions were not vitiated by enactment of the Federal Kidnapping Act, 47 Stat. 326, or its subsequent amendment, 48 Stat. 781, 18 U.S.C. § 1201, and applicability of its provisions here is extremely doubtful.[15]

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[12]

So far as we can ascertain, the court below stands practically alone; Brown v. Frisbie, 178 F. 2d 271; and the cause now reviewed, Collins v. Frisbie, 189 F. 2d 464.—Cf. Robinson v. United States, 144 F. 2d 392, involving the Removal Statute, 18 U.S.C. § 591, and holding, inter alia, that the presence of the defendant in the court of trial gave it complete jurisdiction over his person, regardless of how his presence was secured; affirmed, 324 U.S. 282, without discussing this point.

[13]

Please see, e.g., United States ex rel, Voigt v. Toombs, 67 F. 2d 744; cert. denied, 291 U.S. 686; Stamphill v. Johnson, 136 F. 2d 291; cert. denied, 320 U.S. 766; Sheehan v. Huff, 142 F. 2d 81; McMahan v. Hunter, 150 F. 2d 498; cert. denied, 326 U.S. 783; Sweet v. Howard, 155 F. 2d 715; Chandler v. United States, 171 F. 2d 921; cert. denied, 336 U.S. 918; Pierce v. Smith, 175 F. 2d 193; cert. denied, 338 U.S. 838; and Gillars v. United States, 182 F. 2d 962.

[14]

Such decisions are collated in 165 A.L.R. 947. Please see, for further example, State v. Moore, 43 Del. 509, 519, 50 A 2d 791, 793; People v. Ragen, 396 Ill. 554, 72 NE 2d 311; In re Greenough, 116 Vt. 277, 75 A 2d 569, 572. And Michigan has considered her self bound by the decisions of this Court, People v. Mahler, 329 Mich. 155, 156, while Nebraska has overruled an early decision, Cf. Re Robinson, 29 Neb. 135 with Jackson v. Olson, 146 Neb. 885, 22 NW 2d 124, 165 A.L.R. 982.

[15]

Gooch v. United States, 297 U.S. 124; Robinson v. United States, 324 U.S. 282; and Chatwin v. United States, 326 U.S. 455, 462, 463.

3. The State of Michigan, in trying Shirley Collins for murder, did not deprive him of his liberty without due process of law in violation of the Fourteenth Amendment: (a) all magisterial proceedings were regular; (b) he was accused under valid process issued from a court of competent jurisdiction; (c) he had the assistance of counsel for his defense, a speedy and public trial by an impartial jury, was confronted with the witnesses against him, and possessed the right to have compulsory process for obtaining witnesses in his favor, Mich. State Constitution, Article II, § 19. Moreover, following conviction, he was afforded corrective process to cure any error committed during the trial.[16]

Second:

Since the applicant for a writ of habeas corpus from the District Court of the United States, was in custody pursuant to the judgment of a State court, since he failed to show he had "exhausted the remedies available in the courts of the State," 28 U.S.C. § 2254, and since he did not plead exceptional circumstances of peculiar urgency sufficient to require prompt federal action, he was not lawfully entitled to such a writ:[17]

1. He did not raise the question in the trial court and, under a decision of the Supreme Court of Michigan, *In re Reno*, 321 Mich. 497, he might reasonably be deemed to have waived the point.

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[16]

De Meerleer v. Michigan, 329 U.S. 663; Whalen v. Friable, 185 F. 2d 607.

[17]

Ex Parte Hawk, 321 U.S. 114; Darr v. Burford, 339 U.S. 200.

2. Although afforded opportunity, respondent neglected to make such a claim in subsequent applications to the Michigan Supreme Court for mandamus, habeas corpus, and leave to appeal.

Third:

For each of the foregoing reasons, the District Court of the United States was without jurisdiction to issue a writ of habeas corpus in this cause or to resolve issues of fact which might arise from the allegations of Collins' petition therefor. The principal question presented is therefore ripe for decision.

VII

The Argument.

First Point

Michigan's jurisdiction to accuse, try, and upon conviction punish Shirley Collins for murder, was not impaired by the alleged misconduct of her over-zealous police officers.

The authorities, based upon decisions of this Court collated in 165 A.L.R. 947, recognize the universal rule

> "that where a person accused of crime is found within the territorial jurisdiction wherein he is so charged and is held under process legally issued from a court of that jurisdiction, neither the jurisdiction of the court nor the right to put him on trial for the offense charged is impaired by the manner in which he was brought from another jurisdiction, whether by kidnaping, illegal arrest, abduction, or irregular extradition proceedings."

1

The doctrine is sustained in an unbroken line of this Court's decisions, followed, with possibly one exception, by federal courts of appeals and by courts of last resort in the several States.

The court below expressed the opinion (16-17) that decisions of this Court in two leading cases,

Ker v. *Illinois*, 119 U.S. 436,
and
Mahon v. *Justice*, 127 U.S. 700,

ceased to control the question involved when the Federal Kidnapping Act, 18 U.S.C. § 1201 presently considered, was enacted in 1932, and that there are further factors distinguishing them from the situation at bar.

In the case of *Ker, supra,* the defendant had been kidnapped in Peru and brought by force against his will within the jurisdiction of the State (Illinois) whose law he had violated, and this Court held in reviewing his conviction, that how far such forcible transfer of the defendant might be set up against the right to try him, was the province of the state court to decide, and presented no question in which this Court could review its decision. Moreover, the due process of law guaranteed by the Fourteenth Amendment,

> "is complied with when the party is regularly indicted by the proper grand jury in the State court, has a trial according to the forms and modes prescribed for such trials, and when, in that trial and proceedings, he is deprived of no rights to which he is lawfully entitled. . . . for mere irregularities in the manner in

> which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment. . . . So here, when brought within the jurisdiction of the State of Illinois and liable to answer for a crime against the laws of that State, unless there was some *positive* (emphasis added) provision of the Constitution or of the laws of this country violated in bringing him into court, it is not easy to see how he can say that he is there 'without due process of law,' within the meaning of the constitutional provision."

In *Mahon* v. *Justice, supra,* which followed *Ker,* holding *inter alia* that the Due Process Clause of the Fourteenth Amendment had no bearing upon interstate abduction,[18] this Court established the further principle that no mode is provided by the Constitution and laws of the United States by which a person, unlawfully abducted from one State to another, and held in the latter State under process of law for an offence against the State, can be restored to the State from which he was abducted.

The case of *Lascelles* v. *Georgia,* 148 U.S. 537, brought into focus the status of a fugitive from justice who has been surrendered by one State of the Union to another State, upon requisition charging him the commission of a specific crime, and the Court held that such a person has, under the Constitution and laws of the United States, no

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[18]

The Court said, among other things, "The law of that State which is enforced is a law for the punishment of the crime of murder, and she has merely sought to enforce it by her officers under process executed within her territory. She did not authorize the unlawful abduction of the prisoner from West Virginia," 127 U.S. at 707.

right, privilege or immunity to be exempt from indictment and trial, in the State to which he is returned, for any other or different offence from that designated in the requisition, without first having an opportunity to return to the State from which he was extradited. Following the principles announced in *Ker* and *Mahon* as well as in *Cook* v. *Hart*, 146 U.S. 183, 190, 192, it was said, 148 U.S. at 543:

> "But it is settled by the decisions of this Court that, except in the case of a fugitive surrendered by a foreign government, there is nothing in the Constitution, treaties or laws of the United States which exempts an offender, brought before the courts of a state for an offence against its laws, from trial and punishment, even though brought from another state by unlawful violence, or by abuse of legal process."

It was largely due to the decision in *Lascelles, supra*, that the Michigan Supreme Court modified earlier decisions,[19] and Nebraska's highest court overruled a case which had stood in that State for many years,

Jackson v. *Olson*, 146 Neb. 885; 22 NW 2d 124, 132; 165 A.L.R. 932, overruling

In re Robinson, 29 Neb. 135.

Later adhering to these principles, the Court, *In re Johnson*, 167 U.S. 120, 125, held that "the law will not permit a person to be kidnapped or decoyed within the jurisdiction for the purpose of being compelled to answer to a

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[19] In re Little, 129 Mich. 454, modifying dictum on the subject In re Cannon, 47 Mich. 481, and in People, ex rel. Watson, v. Judge, 40 Mich. 729. Please see also, People v. Maher, 329 Mich. 155; cert. denied, 340 U.S. 949.

mere private claim, but in criminal cases the interests of the public override that which is, after all, a mere privilege from arrest."

Federal courts of appeals, and United States courts of appeals, as constituted since 1948, have followed religiously the *Mahon* and *Ker* decisions in a host of cases almost too numerous to list, though a few are cited in footnote 13, *ante*, by way of illustration, esp., those handed down after enactment of the Federal Kidnapping Act.

Such decisions hold it elementary, 25 Am. Jur., Habeas Corpus, § 34, p. 169, that the return of one from another state, even by force and without formality of extradition procedure, to face criminal charges in the state to which he is returned is not a denial of due process of law,

E.g., *Sweet* v. *Howard, Warden,* 155 F. 2d 715, 717.

This guiding principle has also recently been applied to the jurisdiction of a Federal District Court in cases holding that the personal presence of a defendant gives such a court complete jurdiction over him regardless of how his presence was secured, and the court cannot decline to exercise such jurisdiction.

Stamphill v. *Johnson,* 136 F. 2d 291, 292; cert. denied, 320 U.S. 766;

f. *Chandler* v. *United States,* 171 F. 2d 921 syl. 8; cert. denied, 336 U.S. 918;

Gillars v. *United States,* 182 F. 2d 962, 972.

The vast majority of the state courts of last resort have,

of course, followed the decisions of this Court, Michigan quite recently,

People v. *Mahler*, 329 Mich. 155; cert. denied, 340 U.S. 549.

Such decisions are cited in footnote 14, and they require no further comment.

We respectfully submit that the opinions of this Court expressed in *Ker*, *Mahon*, *Johnson* and *Lascelles*, still control, unaffected by the Federal Kidnapping Act.

2

The principles which guided this Court to the decisions cited above, were not vitiated by the Federal Kidnapping Act.

The Federal Kidnapping Act of 1932, 18 U.S.C. § 1201, as broadened in scope by the amendment of 1934, was, we respectfully submit, never intended to reach and punish as criminals, over-zealous police officers who falsely arrest and transport across state boundaries, those charged with offenses against the laws of the state to which the accused is taken.

That Statute, as we read its provisions, was intended solely as a punitive measure against criminals who like Bruno Hauptman kidnapped, held and killed the Lindberg child.[20] Surely, the decisions cited by the court below do not sustain the contention that the statute was otherwise intended.

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[20]

State v. Hauptmann, 115 N.J.L. 412; cert. denied, 296 U.S. 649.

In *Gooch* v. *United States*, 297 U.S. 124, 128, the Court held that an officer of the law who is unlawfully seized and carried away to prevent the arrest of his captor is "held for . . . reward or otherwise", within the meaning of the Federal Kidnapping Act as amended; and transportation in interstate commerce of the officer while thus restrained constitutes a violation of the Act.

> "Holding an officer to prevent the captor's arrest (said the Court) is something done with the expectation of benefit to the transgressor. So also is kidnapping with purpose to secure money. These benefits, while not the same, are similar in their general nature and the desire to secure either of them may lead to kidnapping. If the word reward, as commonly understood, is not itself broad enough to include benefits expected to follow the prevention of an arrest, they fall within the broad term, 'otherwise.'"

Speaking for this Court in *Chatwin* v. *United States*, 326 U.S. 455, 464, Mr. Justice Murphy urged against a too broad construction of the Act and said, in part:

> "In short, the purpose of the Act was to outlaw interstate kidnappings rather than general transgressions of morality involving the crossing of state lines. And the broad language of the Act must be interpreted and applied with that plain fact in mind . . . Were we to sanction a careless concept of the crime of kidnapping or were we to disregard the background and setting of the Act the boundaries of potential liability would be lost in infinity."

Moreover, should the Act be construed to include officers of the law, it still would not apply to this particular case

for the statute does not amend the law governing interstate rendition, nor does it expressly curtail the jurisdiction of State courts to accuse, try and punish those who violate the law of the forum.

While federal law now prescribes punishment for whoever knowingly transports in interstate commerce any person who has been kidnapped, 18 U.S.C. § 1201, and though it exacts the penalty of death whenever maltreatment of the victim is established, it does not necessarily follow, when state police officers forcibly transport against his will an accused person into the territorial confines of a court wherein he is lawfully charged with murder, that consequently the respondent becomes constitutionally immune from prosecution; and certainly no federal statute, including the Kidnapping Act, *supra*, maps procedure to restore the guilty party to the asylum state.

It should go without saying that, if defendant's allegations of fact (2-4) were true, Michigan would never condone the course of misconduct pursued by over-zealous police officers, but this does not mean that if the Federal Kidnapping Act were so violated, the convicted offender against Michigan's law must go free.

If because of acts of Michigan police officers, in violation of federal law, the Michigan trial court forfeited jurisdiction over his person, and should the District Court be required to release him on habeas corpus, Shirley Collins could never be retried and punished for murder until he voluntarily returns to the asylum state of Illinois there to await extradition proceedings; and since there exists no authority under federal or state law to compel such action, he could escape the consequences of his crime by the simple expedient of remaining in Michigan. We doubt very much

that the Congress intended such consequences to flow from a violation of the statute, or that this Court would be inclined to place so loose a construction upon a law designed "to assist the states in stamping out this growing and sinister menace of kidnapping," *Chatwin v. United States*, 326 U. S. 455, 463. Clearly, we think, the Federal Kidnapping Act was not passed for the purpose of strangling the exercise of state sovereignty in bringing criminals to justice. And the penalty of death for the individual suffices to maintain the integrity of federal authority.

3

Shirley Collins, in his trial for murder, was not deprived of his liberty without due process of law.

The respondent was accused of murder under valid process issued from a Michigan court of competent jurisdiction; a warrant executed by a justice of the peace initiated criminal proceedings against him, and Collins was given a preliminary examination to determine whether probable cause existed to bind him over to the circuit court for trial;[21] upon return of the magistrate so certifying, the prosecuting attorney filed in the circuit court his information advising the accused of the nature of the offense charged against him;[22] he had the advice and assistance of competent counsel throughout the entire course of magisterial and trial procedure, and final conviction came from a

[21]

Michigan Comp. Laws 1948, § § 766.1, 766.3, 766.4, 766.13; Mich. Stat. Ann. (Henderson) § § 28.919, 28.921, 28.922 and 28.931.

[22]

Mich. Comp. Laws 1948, § 767.40; Mich. Stat. Ann. (Henderson) § 28.980.

fair and impartial jury;[23] there is no claim on his part that during the trial he was denied any fundamental right essential to justice and therefore guaranteed by the Due Process Clause of the Fourteenth Amendment. Thus, the constitutional rights of the accused have been fully safeguarded, and by his conviction and sentence, following a fair trial, Michigan's sovereignty has been upheld.

Second Point

Since Collins failed to show he had "exhausted the remedies available in the courts of the State," and did not plead exceptional circumstances of peculiar urgency sufficient to warrant prompt federal action, he was not entitled to the writ, 28 U.S.C. § 2254.

The petitioner in *Darr v. Burford*, 339 U.S. 200, a state prisoner, applied to a Federal District Court for habeas corpus and was denied the writ for his "omission to apply here for certiorari from the state court's denial of habeas corpus." This Court, deeply concerned, held, upon authority of *Ex Parte Hawk*, 321 U.S. 114, that ordinarily an application for habeas corpus by one detained under a state court judgment of conviction for crime will be entertained by a federal court only after all state remedies available, including all appellate remedies in the state courts, have been exhausted and review has been denied by this Court, and that in § 2254 of the 1948 recodification of the Judicial Code, Congress accepted the rule of the *Hawk* case as a sound rule to guide consideration of habeas corpus in federal courts.

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[23] Mich. Const., Article II, § 19.

Further, it was decided, p. 219, the petitioner had not sustained the burden of showing that circumstances of peculiar urgency existed to require prompt federal intervention.

The narrow and perplexing question involved in *Darr v. Burford, supra*, is not here presented for consideration, for in the case at bar the applicant for habeas corpus has taken advantage of no remedy offered him by the State of Michigan.

As recognized by this Court,[24] as well as the United States Court of Appeals for the Sixth Circuit,[25] Michigan's corrective process where claims of constitutional infringement are made, comprises a delayed motion for new trial and in the event of an adverse decision, an application for leave to appeal to the state's highest court. But the defendant did not choose to exercise that privilege for the purpose of asserting his present contention.

1

In his petition for habeas corpus (1-3), filed in the Federal District Court 8 years after his conviction for murder, Collins fails to allege that he had a trial by jury, with full benefit of counsel, or that he raised a challenge to the trial court's jurisdiction or that he moved for a new trial on that ground, or that he appealed to the Michigan Supreme Court on the basis of official violation of the Federal Kidnapping Act.

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[24] De Meerleer v. Michigan, 329 U.S. 663.

[25] Whalen v. Frisbie, 185 F. 2d 807.

It appears from the petition (22-25) for rehearing and other relief, filed in the court below, however, that Shirley Collins has never by motion for new trial or otherwise raised in the courts of Michigan the question of jurisdiction presented in his petition for habeas corpus (22).

While Michigan has been extremely liberal in permitting a dilatory motion for new trial to be filed, especially where constitutional questions are involved, *Whalen v. Frisbie*, 185 F. 2d 607, or where it is asserted that in the trial of one sentence to a long term of imprisonment, a fundamental right has been abridged, *De Meerleer v. Michigan*, 329 U.S. 663, *Quicksall v. Michigan*, 339 U.S. 660, the Supreme Court of that State might *possibly* feel that in the case at bar it would be stretching the privilege beyond reasonable bounds to permit the filing of such a delayed motion for the purpose of raising an objection to the jurisdiction of the trial court which should in all conscience have been interposed at the threshold of the circuit court.

In the recent case of *People v. Maher*, 329 Mich. 155, cert. denied 340 U.S. 949, it will be noted from a perusal of the record on file in this Court, No. 325 Miscel. October Term 1950, that on motion of the State the cause was remanded to the circuit court for the purpose of taking further testimony concerning defendant's claim that he had been kidnapped in Indiana and brought across state boundary lines into Michigan to face trial for murder. The trial judge, finding no support in evidence for defendant's claim, and giving him no credence, denied the motion. The Supreme Court affirmed, holding as a matter of law based upon this Court's decisions in *Ker* and *Lascelles*, *supra*, there was no merit to defendant's claim, stating at the same time that "furthermore, the record amply supports the trial court's finding that defendant came into this State voluntarily."

In the case of *Mahler*, however, a plea of guilty was accepted shortly after the defendant's return to Michigan from Indiana, and the Supreme Court, as well as the trial judge, probably felt that the facts and circumstances surrounding the arrest, the transportation of the defendant from Indiana to Michigan, and his subsequent conviction on plea of guilty, should be subjected to close judicial scrutiny.

Here, in the case of Collins, the defendant had counsel at all times and pled not guilty to the information filed against him in circuit court. He interposed no motion to quash the information on the ground that the trial court lacked jurisdiction because of illegal transportation into the State, following kidnapping in Illinois, and he waited 8 years before he raised the question in a Federal Court. It might well be held, we think, that the matter of procedure is controlled, so far as Michigan courts are concerned, by

In re Reno, 321 Mich. 497,

where it was held that the defendant, by pleading guilty to an offense properly charged in the information, thereby waived defects in the complaint and warrant, and that after entry of a plea in the circuit court the prior proceedings had before an examining magistrate cannot be questioned nor can the defendant then complain even though there has been no examination.

2

It further appears (23) that although Collins has on several occasions applied to the Supreme Court of the State of Michigan for writs of mandamus, for leave to appeal, and for a writ of habeas corpus, he has never invoked these remedies on the ground that the trial court lacked jurisdiction to try him for the criminal offense of murder, by virtue of the alleged fact that he had been kidnapped by Michigan police officers and transported in interstate commerce contrary to Federal law. A complete summary of such state proceedings will be found in the printed transcript of the record (23-29).

We respectfully submit that in the circumstances disclosed by the record it cannot be said that the defendant Collins has met the burden of pleading or proving the existence of exceptional circumstances of peculiar urgency which require prompt federal intervention, *Darr v. Burford, supra*, 339 U. S. 200.

Surely when, as in this cause, an accused person neglects through his counsel promptly to raise the question of jurisdiction in the initial stages of his prosecution, or during the course of his trial by jury, or in a motion for new trial or on appeal to the State Supreme Court, and when, as here, he allows 8 years to elapse before asserting such a claim, there exists no emergency.

There remains our duty to inform the Court, although the fact does not appear in the present record, that upon remand of this cause from the court of appeals to the district court, a hearing was held, witnesses were produced, testimony was given on both sides, and the issue of fact, whether the police officers kidnapped Collins and trans-

ported him into the state, is about to be resolved by the federal court.

This does not, however, we respectfully submit, render moot the questions here presented, for it is our position that the District Court is without power or authority to resolve such issues of fact unless or until it clearly appears that all state remedies have been exhausted by the defendant.

In short, it is our firm belief that the vital question before this Court at the present time, involves Michigan's sovereignty exercised in bringing to justice persons accused of criminal offenses, and in providing adequate remedies for the correction of errors committed by her courts.

Unless Michigan is to lose such sovereign powers entirely, it is for her courts to resolve the issues of fact in this case.

Third Point and Conclusion.

For each of the foregoing reasons, the District Court of the United States was without jurisdiction to issue a writ or resolve issues of fact thereon.

We take the firm position that under the authority of those decisions of this Court cited so often in our brief, the District Court was without any jurisdiction to resolve issues of fact, and its power was exhausted when it held that the illegal arrest of Collins by Michigan police officers, followed by transportation from Illinois to Michigan to face trial in the latter State, did not diminish or impair the jurisdiction of the circuit court to try him for murder. Such issues of fact, if deemed pertinent, should be resolved by Michigan courts.

It is most respectfully urged that the order of the United States Court of Appeals for the Sixth Circuit, remanding the cause to the District Court, should be reversed.

Respectfully Submitted,

Frank G. Millard
Attorney General of the
State of Michigan

Edmund E. Shepherd
Solicitor General of the
State of Michigan

Daniel J. O'Hara
Assistant Attorney General

Counsel for Petitioner

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 331

JULIAN N. FRISBIE, WARDEN, STATE PRISON OF SOUTHERN MICHIGAN, JACKSON, MICHIGAN,

Petitioner,

vs.

SHIRLEY COLLINS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT

A. STEWART KERR,
Attorney for Respondent.

Of Counsel:

CRAWFORD, SWEENEY AND DODD.

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SUPREME COURT OF THE UNITED STATES

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SHIRLEY COLLINS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT

I

Opinion of the Court Below

This is reported as *Collins v. Frisbie, Warden,* 189 F. (2d) 464. As related in Petitioner's brief, the opinion (p. 14) and dissent (p. 20) appear in the transcript of record, together with the findings of the District Court (pp. 11-12).[1]

[1] For convenience, and in conformity with Petitioner's brief, references to the printed transcript of record are set forth in parentheses. Page references to authorities and references to pages in Petitioner's brief are not so inclosed; no reference is made herein to the brief annexed in support of Petitioner's petition for writ of certiorari.

II

Jurisdiction

Judgment of the United States Court of Appeals for the Sixth Circuit, (p. 14);
Petition for rehearing (p. 22);
Petition denied, June 25, 1951 (p. 29);
Petition for writ of certiorari, September 17, 1951;
Petition for writ of certiorari granted, November 5, 1951;
28 U. S. C., Section 1254 (1), 1948.

III

Questions Presented

1. Respondent accepts as accurate the first Question presented in Petitioner's brief, page 3, with a single exception: That all of Respondent's rights under the due process clause of the Fourteenth Amendment were not preserved.

2. Respondent accepts the second Question presented in Petitioner's brief, page 4, reserving however the right to show all of the exceptional circumstances requiring federal relief without limitation as to Respondent's scope of pleading them heretofore in proper person.

IV

Statement of the Case

Respondent accepts the statement found in Petitioner's brief, pages 8-11, inclusive.

V

Summary of Argument

1. The unlawful seizure and kidnapping of Respondent in Illinois by Michigan officers, who abducted or carried

away Respondent to Michigan, there to be held and tried for a prior crime in that State, would invalidate the jurisdiction of the Michigan trial court. "A state may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of" the Federal Kidnapping Act (p. 19).

2. Respondent is entitled to a hearing in the appropriate United States District Court upon the merits of his petition for writ of *habeas corpus* without having exhausted his state court remedies, because of "exceptional circumstances" which exist in this cause.

VI

Argument

1. A state may not lawfully try, convict and punish a person brought within its territorial confines by force and violence exercised by its officers in violation of the Federal Kidnapping Act.[2]

The general rule is stated at page 14 of Petitioner's brief, namely, that a criminal trial court's jurisdiction is not impaired by the manner in which an accused is brought before it from another jurisdiction. "Courts have shown no inclination to scrutinize too closely the means used by police officers to secure fugitives from justice, and bring them before the courts for trial." *In re Little*, 129 Mich. 454 (1902). The universal rule to which Petitioner's brief adverts was set down in *Ker* v. *Illinois*, 119 U. S. 436, in which the offended jurisdiction was a foreign sovereign. The *Ker* holding and the cases which have followed it[3] crystal-

[2] 47 Stat. 326; 48 Stat. 781; 18 U. S. C. Sec. 1201.

[3] *Mahon* v. *Justice*, 127 U. S. 700; *Cook* v. *Hart*, 146 U. S. 183; *Lascelles* v. *Georgia*, 148 U. S. 537; *Adams* v. *New York*, 192 U. S. 585; *Pettibone* v. *Nichols*, 203 U. S. 192; etc.

lized the general rule [4] before a federal statute against kidnapping was enacted. Some of the principal cases which have upheld the power of state tribunals to prosecute accused persons dragged into its jurisdiction, neatly avoiding questions of "due process" en route, speculated upon the wisdom of or expressed a wish for a federal statute which would, in effect, relieve the courts of ruling by processes of sophisticated reasoning that an accused citizen does not have certain inviolable rights which he commonly believes are his Constitutionally. This judicial yearning is expressed in *Mahon* v. *Justice, supra,* at page 285 of that opinion. In *Ker* v. *Illinois, supra,* at page 423, the wish is fathered for "some positive provision (of the Constitution or) of the laws of this country" by which persons so seized might be protected. It is seen in the dissent in *Pettibone* v. *Nichols, supra,* where kidnapping was said to be "a crime, pure and simple"; but had not then been the subject of specific prohibition by Congress. The major question, then, which is now before this Court is whether the Federal Kidnapping Act interposes the safeguard, long-needed, to protect the accused from those territorial and coercive excesses which defeat the obvious intent of the Constitution as evidenced in its extradition procedure and in the Fourteenth Amendment. This Court of Appeals has so held, in the case at bar and in *Brown* v. *Frisbie,* 178 F. (2d) 271 (C. A. 6th 1949).[5] The logic and authority of this Circuit's two rulings may not be lightly dismissed as in Petitioner's brief, page 12, footnote 12; the cases there cited

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[4] Which, if "universal", ignores a contrary view in Kansas. Cf. *State* v. *Simmons,* 39 Kan. 262, 18 P. 177 (1888); *State* v. *Garrett,* 57 Kan. 132, 45 P. 93 (1896); *State* v. *Wellman,* 102 Kan. 503, 167 P. 1052 (1918).

[5] The Court of Appeals did not actually cite the Federal Kidnapping Act as the basis of its Brown holding; but the ruling was tantamount to that and the same Court quite evidently so regards its *Brown* ruling in its opinion in the *Collins* case.

and in footnote 13, even where they post-date the Federal Kidnapping Act, do not directly raise the question of that statute.

Petitioner's brief, in handling *Gooch* v. *U. S.*, 297 U. S. 124, does not seriously contend that the words "or otherwise" in the amended Federal Kidnapping Act do not embrace and include, if the Act is otherwise applicable, the kidnapping by police officers of a fugitive and transporting such accused to another jurisdiction for trial. It is not open to question that, save for specific exceptions, the statute covers "every possible variety of kidnapping followed by interstate transportation". *Chatwin* v. *U. S.*, 326 U. S. 455, 463. Petitioner skirts this by citing Mr. Justice Murphy's comment in the *Chatwin* case, *supra*, as to the "purpose" of the Act in relation to morals cases, thence moves to tie in public policy aspects of the absence of an asylum state restoration provision, Michigan's projected inability to re-try Respondent, the strangulation of state sovereignty, and the like. A limited response is appropriate only because public policy considerations do enter into spoliative action upon a rule or at least an aberant of rule such as this Court is here asked to affirm. It is no less in the public interest to vitiate convictions where jurisdiction is obtained in clear defiance of the Federal Kidnapping Act than, say, to set aside convictions arising out of entrapment or coerced confessions. The motivation or justification for kidnapping by police authorities is based on an extreme pre-supposition that the suspect is guilty before he is tried. This violates every concept of our jurisprudence touching upon liberty and justice. The policy aspect has been forcefully put by the lower Court (p. 19) in this language:

> "The courts of the United States should uphold the constitutional guarantee of due process of law by all

appropriate means within their lawful powers, including issuance in last resort cases of the writ of *habeas corpus*. Certainly, if evidence obtained by wire tapping be such dirty business as to be suppressed, and if every safeguard is to be placed against the securing of convicting evidence by unreasonable and unlawful search and seizure, a citizen, regardless of how depraved or vicious he may be, may not be seized, kidnaped and forcibly abducted from one state to another by police officers acting beyond their territorial jurisdiction in violation of a criminal law of the United States enacted to prevent kidnaping. Officers of the law are no less immune from the condemnation of the statute than are ordinary citizens; indeed, they should be held to strict accountability.

"To uphold criminal acts of either state or federal police officers who violate an explicit federal statute, by permitting a citizen kidnaped by them to be brought to trial and punishment in a jurisdiction to which he has been forcibly brought without warrant of law, would in practical effect lend encouragement to the commission of criminal acts by those sworn to enforce the law."

Congress, perhaps prompted by kidnappings differently motivated, has spoken upon a subject which, as suggested above, the courts, and this Court, have indicated has had a need for legislation. The existence of a specific, statutory criminal prohibition against interstate abductions requires reexamination by this Court of its earlier decisions and a ruling, in affirmance of the Court of Appeals, that a state trial court may not obtain jurisdiction of an accused fugitive in direct violation of that Act by which Congress has said that the transaction is criminally illegal.

* * * * *

2. Respondent is entitled to a District Court hearing upon the merits of his petition for writ of *habeas corpus* without

having exhausted his state court remedies, because of "exceptional circumstances".

Respondent has not gone through the mechanics of exhausting his State court remedies, if any, on the particular point of his abduction in violation of the Federal Kidnapping Act.[6] It would have availed him nothing had he attempted to do so. If there is any certainty of prediction, it is that the Supreme Court of Michigan would deny Respondent's plea for remedy, in whatever form sought, and that it would follow the "universal rule", to which Petitioner's brief frequently refers, of ignoring any impropriety by which jurisdiction of Respondent's person was obtained. That Court adhered to the "rule" as far back as 1902, *In re Little, supra,* saying at page 457 that "we feel compelled to follow the decision of the Supreme Court of the United States". As recently as 1950, the Michigan Supreme Court made it apparent in *People* v. *Maher*, 329 Mich. 155, aside from any factual finding, that it held as a matter of law that an attack on jurisdiction "is without merit" where such attack was founded on averment that defendant was abducted from Indiana by Michigan police officers.[7] Perhaps, then, the certainty that any application to the Michigan courts to avoid the conviction on this ground would be denied[8] is itself an exigency or exceptional circumstance, within the meaning of *Darr* v. *Burford*, 339 U. S. 200, which

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[6] Note that when Respondent filed his petition in 1950, the Court of Appeals had already ruled, *Brown* v. *Frisbie*, 178 F. (2d) 271 (1949), that another Michigan prisoner in like circumstances was not required to have exhausted his state remedies. Respondent, acting in proper person, did the obvious thing: he petitioned the United States District Court.

[7] Cf. *Hampson* v. *Smith*, 162 F. (2d) 334 (C. A. 9th, 1947), believed statutorily overruled by 28 U: S. C. Sec. 2254.

[8] Petitioner's brief, page 25, notes that the Supreme Court of Michigan "might possibly" have denied the filing of a delayed motion for new trial, not merely because of delay subsequent to trial but because the jurisdictional objection should have been interposed at or before trial.

justifies requiring the District Court to examine upon its merits the application for habeas corpus, without prior exhaustion of state remedies and without application for certiorari to this Court from a final State court ruling.[9] The complete lack of practical, substantive relief, as distinguished from a mere right to file papers in the state court procedures theoretically open to him, suggests "the existence of circumstances rendering such process ineffective to protect the rights of the prisoner" within the meaning of that exception to statutory limitation of the writ found in 62 Stat. 967; 28 U. S. C. Sec. 2254,[10] and within the related language in *Darr* v. *Burford, supra*, at page 210.

Respondent's position on the point is illustrated by the well known language found on page 118, *Ex parte Henry Hawk*, 321 U. S. 114, although Respondent has not duplicated Hawk's incomplete efforts:

> "But where resort to state court remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the state affords no remedy" (citing) "or because in the particular case the remedy afforded by the state proves in practice unavailable or seriously inadequate" (citing), "a federal court should entertain his petition for habeas

[9] Respondent does not concede that *In re Reno*, 321 Mich. 497, cited in Petitioner's brief, page 26, would be controlling. It is one thing to say that preliminary and procedural defects may be waived in a criminal case; it is quite another to claim that Respondent unwittingly waived the question of jurisdiction of the person if that jurisdiction was void *ab initio*. (And see *Johnson* v. *Zerbst*, 304 U. S. 458, at page 464, as to waiver of fundamental rights.) But if Petitioner's view of *In re Reno* be correct, it further emphasizes the unavailability or serious inadequacy of State court remedies and the applicability of that portion of 28 U. S. C., Sec. 2254, above quoted.

[10] As far back as the dissent in *Mahon* v. *Justice, supra*, it was thought that the inherent power of Federal courts to issue the writ for relief of violations of the spirit rather than the letter of the Constitution should be used in Respondent's situation; "the exigency has arisen in which the law applies." See page 289 of 127 U. S.

corpus, else he would be remediless. In such a case he should proceed in the federal district court . . . ."

* * * * *

The revealing footnote in the Court of Appeals opinion (p. 20), and its citations of Eastern District of Michigan cases, argue forcefully that the "exceptional circumstances" which avoid the necessity of exhausting the state court remedies and of petition thereon for certiorari to the Supreme Court need not be personal or lie within the particular case. The Court of Appeals plainly said, from its coign of vantage, that these exceptional circumstances exist and that they warrant application of the "special circumstances" exception to this case: That officers of the State of Michigan have been "forcibly abducting and kidnaping from other states and bringing, without warrant of law or extradition, persons charged with crime into the State of Michigan for trial" (p. 20); further, that an impasse exists between the Court of Appeals and the District Court for the Eastern District of Michigan thereon, despite *Brown* v. *Erisbie*, *supra;* that the recited decisions of the District Court uphold or encourage illegal police forays identical to that suffered by Respondent.[11] Exceptional circumstances these are indeed, and although not peculiarly personal to Respondent except as his relief is sought through that particular Federal jurisdiction, they are exceptional circumstances in the public interest, and they are here urged in further support of the position that Respondent should not be precluded from relief because he has not exhausted his State court remedies (if any).

* * * * *

[11] Re-illustrating the public policy problem earlier referred to, and the need for statutory "public peace along the borders of the several states" (*Mahon* v. *Justice*, *supra*), all of which will be put in focus by affirmance of the Court of Appeals' ruling in the instant cause.

Petitioner's brief emphasizes that Respondent had the benefit of counsel at trial. Whether that has been true in his subsequent efforts to obtain freedom is not in this record; it is gathered that all of his efforts have been in proper person. This Court said, *Ex parte Davis*, 318 U. S. 412, that poverty of a prisoner does not, of itself, excuse him from exhausting all available state remedies. Yet it is apparent that a combination of lack of legal training, poverty and the practical futility of state court remedies, is powerful and persuasive upon the lower courts.

Potter v. *Dowd*, 146 F. (2d) 244 (C. C. A. 7th, 1944);
Thomas v. *Duffy*, 191 F. (2d) 360 (C. A. 9th, 1951);
Boyd v. *O'Grady*, 121 F. (2d) 146 (C. C. A. 8th, 1941);
Ex parte Morgan, 78 F. Supp. 756 (D. C. S. D. Cal., C. D., 1948); aff'd., 175 F. (2d) 404; Cert. denied, 338 U. S. 827.

These ingredients vary in proportions in cases such as the above. The lack of state remedy may be more apparent in one case than another; but the plight of the prisoner through ignorance, lack of counsel or abuse is easily read in the "exceptional circumstances" which each court finds, a catalytic upon the companion finding that the state courts offered no real succor. So it was in *Potter* v. *Dowd, supra*, an opinion antedating Sec. 2254 of Title 28 but which fits itself into the exceptions tolerated in *Ex parte Hawk, supra*, which were directly given "legislative recognition" [12] in the Code. In *Thomas* v. *Duffy, supra*, the fact that the element of time precluded regular procedures was sufficiently dramatic to incite the court's ruling, but the petitioner's personal limitations and the "conduct by state officers" (Cf. the arresting Michigan officers in the case at bar) were a part of the exigencies which justified the Court

[12] *Darr* v. *Burford, supra*, page 210.

of Appeals in finding that the requirement of "exhaustion" was obviated. When justice requires, these courts have found, and subsequent to *Ex parte Hawk, supra,* that an habeas corpus petitioner has, in the words of an older opinion, a

> "rare case and peculiar urgency where the petitioner had no fair prospect of securing full and complete protection of the rights guaranteed by the federal constitution through habeas corpus proceedings, even by appeal to the court of last resort in the State." (*Boyd v. O'Grady, supra,* at page 148.)

The fact that Respondent, a prisoner of limited background, has not subsequent to trial raised, perhaps had not even thought to raise prior to *Brown* v. *Frisbie, supra,* in the State courts the question of jurisdiction illegally obtained in violation of the Federal Kidnapping Act, now presents the problem of whether he is not to be excused for failure to exhaust in the State courts an issue which had neither been specifically raised nor decided in this Court or elsewhere. If there is no case law upon the point, it would be most technical to preclude Respondent because he had not the ingenuity to envision a new issue and himself carry it through the State court procedures, thence to this Court, and taking care to avoid the pitfalls collected and discussed in *Darr* v. *Burford, supra.*

VII

Conclusion

The District Court for the Eastern District of Michigan had, under the circumstances, the jurisdiction to entertain the petition, resolve the factual issues and to issue the writ of habeas corpus.

For the reasons herein urged, and for the additional reasons and authorities set forth in the opinion of the

Court of Appeals, it appears that this Court should hold that violation of the Federal Kidnapping Act voids the jurisdiction of the Michigan trial court which was obtained solely by such illegality and, in the particular premises, affirm the order of the Court of Appeals irrespective of Respondent's failure to exhaust State court remedies.

It is respectfully requested that the order of the United States Court of Appeals for the Sixth Circuit, which remanded the cause to the United States District Court for hearing upon the merits, be affirmed.

Respectfully submitted,

A. Stewart Kerr,
Detroit, Michigan,
Attorney for Respondent.

Of Counsel:

Crawford, Sweeny and Dodd,
Detroit, Michigan.